PATENT OFFICE INQUIRY.

REPORT

OF

THE COMMITTEE APPOINTED BY THE BOARD OF TRADE

TO INQUIRE INTO

THE DUTIES, ORGANISATION, AND ARRANGEMENTS

OF THE

PATENT OFFICE

UNDER THE

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883,

SO FAR AS RELATES TO

TRADE MARKS AND DESIGNS;

TOGETHER WITH

MINUTES OF EVIDENCE, APPENDICES, &c.

Presented to both Houses of Parliament by Command of Her Majesty.

Bx-k-3 (
110568

LONDON:
PRINTED FOR HER MAJESTY'S STATIONERY OFFICE,
BY EYRE AND SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

And to be purchased, either directly or through any Bookseller, from
EYRE AND SPOTTISWOODE, EAST HARDING STREET, FLEET STREET, E.C., and
32, ABINGDON STREET, WESTMINSTER, S.W.; or
ADAM AND CHARLES BLACK, 6, NORTH BRIDGE, EDINBURGH; or
HODGES, FIGGIS, & Co., 104, GRAFTON STREET, DUBLIN.

1888.

[C.—5350.] *Price 2s. 6d.*

CONTENTS.

	Page
MINUTE APPOINTING COMMITTEE	iii
REPORT OF COMMITTEE	v
MINUTES OF EVIDENCE	1
APPENDICES	195
PRÉCIS OF EVIDENCE	207

Digitized with financial assistance from
Shri Brihad Bhartiya Samaj
on 31 October, 2019

AT THE COUNCIL CHAMBER, WHITEHALL.

This 24th day of February 1887.

PRESENT:

THE RIGHT HONOURABLE LORD STANLEY OF PRESTON, G.C.B., &c.

The Board of Trade are pleased to appoint the Lord Herschell, the Earl of Crawford, Lord Macnaghten, Right Hon. A. J. Mundella, M.P., Baron Henry de Worms, M.P., Sir Richard Webster, M.P., Q.C., and James F. Hutton, Esq., to be a Committee to inquire into the duties, organisation, and arrangements of the Patent Office under the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57.), so far as relates to Trade Marks and Designs.

The Board of Trade are pleased to direct that Mr. Edward Roscoe shall be Secretary to the said Committee.

(Signed) STANLEY OF PRESTON.

o 50770. Wt. 24920.

Trade Marks and Designs Inquiry Committee.

TO THE RIGHT HONOURABLE SIR MICHAEL HICKS BEACH, M.P., &c., &c., THE PRESIDENT OF THE BOARD OF TRADE.

SIR,

BY a Minute of the 24th of February 1887, the Board of Trade appointed Lord Herschell, the Earl of Crawford, Lord Macnaghten, the Right Honourable A. J. Mundella, M.P., Baron H. de Worms, M.P., Sir Richard Webster, Q.C., M.P., and Mr. James F. Hutton to be a Committee to inquire into the duties, organisation, and arrangements of the Patent Office under the Patents, Designs, and Trade Marks Act, 1883, so far as relates to trade marks and designs. The Committee have held 22 meetings and examined 25 witnesses, including agents having large experience in connexion with the registration of trade marks; representatives of the trade and interests of Manchester, and other trade interests, as well as the officials of the Trade Marks Department of the Patent Office.

The Committee, having carefully considered the evidence, made, on the 4th of August 1887, an interim Report in the following terms:—

TRADE MARKS AND DESIGNS INQUIRY COMMITTEE.

To the Right Honourable LORD STANLEY OF PRESTON, G.C.B., &c., &c., (then) President of the Board of Trade.

MY LORD,

THE evidence which we have thought it necessary to take with reference to the working of the Patents and Trade Marks Act, so far as it relates to trade marks, was completed on the 20th July last. We find that it will be impossible to report upon such of the changes, in our opinion necessary, as can only be effected by legislation, in time for a Bill to be introduced during the present session. It appears to us, however, expedient to submit at once for your Lordship's consideration certain recommendations which may be given effect to without legislation, and which we think would improve the working of the Act. Some of the most important of these relate to what are known as the Cotton Classes, and are calculated to remedy some of the evils which have been pointed out by the Manchester Chamber of Commerce, and by persons interested in the application of trade marks to cotton goods.

1. A very large proportion of the marks registered in the Cotton Classes, probably not less than 90 per cent., are the result of applications made either by Manchester houses or by houses having a representative in Manchester. We think it would add much to the smooth working of the Act if applications in these classes were, as far as possible, dealt with by the head of the Manchester branch of the Trade Marks Office. It is, we think, essential that the registration should take place in London, and that the final decision should rest with the Comptroller as head of the Office; but we recommend that in the case of each application the head of the Manchester Office should report his opinion as to whether the mark ought to be accepted or refused, and that his opinion should be acted upon unless the Comptroller sees clear reason to come to a contrary conclusion. We think that this duty of revision should in all cases be discharged by the Comptroller personally.

2. Inasmuch as the object of registration is to secure a distinctive mark, and the registration of a mark which may conflict with a mark already registered would not only be to the detriment of the owner of such prior mark but of the applicant himself, we think that in cases where it is doubtful whether the mark ought to be accepted or not, the safer and more beneficial course would be to reject it.

3. We think the practice pursued by the Comptroller of suggesting that the applicant should seek the consent of the owner of a mark already registered, where it is doubted whether the mark of the applicant may not conflict with it, is a useful one, if confined within proper limits; but in our opinion such a suggestion ought only to be made where the conclusion has been arrived at that, if the consent be not obtained, the registration must be refused.

4. We think it would be advantageous that, where the registration has been allowed by reason of the consent of the owner of a mark already registered, the fact that such consent has been obtained should appear upon the face of the Register, and that where such consent is limited, as, for example, to the use of the mark in particular markets, such limitations should be entered on the Register.

5. With reference to appeals to the Board of Trade, we think it would be well to revert to what we are informed was formerly the practice, viz., that if on an examination of the papers the Board of Trade see no reason to differ from the Comptroller, they should not hear the case themselves, but refer it at once to the Court.

6. We think that the time has come when, in view of the experience gained, a revision of the present distribution into classes is expedient. This should include, in some cases, a sub-division of existing classes, by grouping together in a single class those articles which are commonly dealt in by the same persons. We think the classification of designs also requires revision.

7. We think that an application should be allowed in a "firm" name, though a single individual only constitutes the firm.

8. We recommend that, if required, a general certificate should be given, on payment of a suitable prescribed fee, for use in legal proceedings in lieu of requiring a special certificate in each case.

9. We recommend also that it should be possible to obtain one certificate for purposes of foreign registration, although the mark may be registered in several classes.

10. We suggest that the fee payable upon change of address should be 1*l.* for a single mark, and 2*s.* for each additional mark with a fixed maximum of 50*l.*

11. We think that an extra charge should be made for insertion in the Illustrated Journal where the block exceeds a prescribed size in breadth as well as depth.

12. We think that a bond to the amount of 200*l.* ought no longer to be required in cases of opposition.

13. The work of the Office has lately been falling much into arrear. This causes serious inconvenience and injustice. It is clear that the present staff is insufficient. We recommend that such an addition be at once made as will enable the Office to work off the arrears and to keep its work up to date.

14. We consider that more adequate accommodation for the public is required in the Trade Marks Department at the Patent Office. We recommend that this matter should have immediate attention.

15. We have not exhausted, in the observations we have made above, the recommendations which we shall have to submit to your Lordship with reference to the administration of the Act; but we have dealt with some of the more important and pressing matters. The others we reserve for our formal Report.

We have the honour to be,
My Lord,
Your obedient Servants,
(Signed) HERSCHELL.
CRAWFORD.
MACNAGHTEN.
H. DE WORMS.
A. J. MUNDELLA.
JAMES F. HUTTON.

(Signed) EDWARD ROSCOE,
Secretary to Committee,
4th August 1887.

The reasons which led the Committee to make many of the recommendations contained in that Report sufficiently appear on the face of it, but further reference will be made to some of them in the final Report upon which the Committee have now agreed.

REPORT.

The complaints which have been made to us of the working of the Act of 1883, and the suggestions which have been submitted of amendments in the law and its administration, have had reference both to the registration of trade marks and designs. We propose to deal with these matters separately, directing attention first to the subject of trade marks.

I.—Trade Marks.

1. We propose first to consider the suggestions which have been made for improvements of procedure in relation to the registration of trade marks.

2. Under the existing law (section 62, subsection 4) if the Comptroller refuses to register a trade mark a right of appeal to the Board of Trade is given to the applicant, but no similar right exists in cases of opposition to the registration. The matter must then be determined by the Court. It has been suggested that provision should be made for an appeal in these cases also to the Board of Trade, and we concur in the suggestion. We think, therefore, that procedure under section 69 should be assimilated to that under section 62, the decision in the former case as well as the latter being in the first instance pronounced by the Comptroller.

3. It was stated before us that during the earlier period of the administration of the Act it was the practice of the Board of Trade, in case of appeal to them under section 62, if on an examination of the papers they saw no reason to differ from the Comptroller, to refer the applicant at once to the Court under section 62, subsection 5; but this practice appears to have been afterwards departed from, the appeals being in all cases heard by the Board of Trade. The evidence satisfied us that the former practice gave greater satisfaction to the public and was more economical than that recently pursued, and we therefore in our interim report recommended that it should be reverted to.

4. A recommendation was made by more than one witness that the appeal to the Board of Trade should be abolished, and an appeal to the law officers substituted. We are not prepared to advise such an alteration. Apart from other reasons we do not think it would be an economical course to those interested, or conduce to the speedy determination of the matters in controversy.

5. It has been pointed out to us that it not unfrequently happens that when notice is given of opposition to the registration of a trade mark the person seeking registration of the mark withdraws his application, and that there is in that event no provision enabling the opponent to obtain the costs to which he has been put in protecting his rights. We think there should be power to award costs in such cases.

6. Our attention has been called to the fact that it has been the practice of the Patent Office to consult the Board of Trade from time to time as to the course that ought to be pursued with regard to registration in individual cases. It is true that by section 82 of the Statute the Comptroller General is to act under the direction and superintendence of the Board of Trade; but we think it was only intended that the Board of Trade should give general directions or settle questions of general practice; not that they should interfere with the personal responsibility or action of the Comptroller in individual cases, except when the matter comes before them in due course of appeal. We therefore recommend that the practice of consulting the Board in particular instances should cease except so far as it may be necessary to bring such instances before them by way of illustration for the purpose of obtaining a direction on some point of general principle or practice.

7. It has been urged before us that the trade mark cases which are pending in the Courts for decision should all be referred to the same judge. We are quite alive to the advantage of securing uniformity, which might result from this course, but it has its disadvantages also, and there are serious practical difficulties in the way of such an arrangement. We are not sufficiently satisfied that it would upon the whole work for the public advantage to be able to recommend its adoption.

8. Evidence was given that proceedings in Court which affect the action of the Comptroller are often conducted without any consultation with him; and that the views which have guided his action are not before the Court. We do not think it would be practicable to give him the control of proceedings in all such cases; and if he were always to be represented it would add greatly to the expense; but we think it is deserving of consideration whether provision might not be made for his views to be brought before the Court by a report in the same way that the Official Receiver's views are presented by that means under the Bankruptcy Act.

9. A suggestion has been made that the Form F., which prescribes the terms in

which registration is to be applied for, should be amended by requiring the applicant, although the mark was not in use prior to the 13th of August 1875, to state the length of time during which it has been used. This, it was said, would serve to prevent opposition in some cases in which it was now resorted to in ignorance of the length of user of the applicant. We think, however, that the course suggested would frequently lead to mis-statement, sometimes intentional, sometimes accidental, and that on the whole it would be of such doubtful advantage that we are not able to recommend it.

10. One witness of great experience in connexion with the registration of trade marks has proposed that a person desiring special expedition in the registration of his marks should be able to procure it by payment of an expedition fee. We cannot support this proposition, as we think it would be liable to abuse, and to operate unduly to the prejudice of other applicants. We have urged such an addition to the staff of the Office as is necessary to enable the work to be kept reasonably up to date; and we trust this may lead to such an improvement in the working of the Office as to deprive the proposal of its present importance.

11. We adopt the recommendation made to us, that on the face of the official notification of the registration of the mark there should appear a representation of the mark as well as a statement of the goods covered and of the date from which the registration operates.

12. Cases of hardship have arisen under section 63 owing to default, and even dishonesty, on the part of agents employed in the registration of trade marks. We think it would be desirable that, instead of the application being deemed abandoned, as at present, some discretion should be vested in the Comptroller. It has been proposed that before the application is deemed abandoned 14 days' notice should be given to the agent employed in registration, and, failing completion, 14 days' notice to the applicant. We see no objection to the adoption of this proposal, with the addition that there should be power for the Comptroller to extend the latter term in special cases where he considers it necessary.

13. We think that the indexing of the trade marks is capable of improvement, and that a good subject-matter index would be of great value.

14. It is said that according to the practice of the Office payment for sums exceeding one shilling is only received by means of Post Office orders. We do not see any reason for continuing such a restriction on the mode of payment.

15. We have given very careful consideration to the evidence which has been laid before us by those interested in the trade of Lancashire. The number of marks registered in Classes 23, 24, and 25, which are commonly described as the Cotton Classes, is very large; and the administration of the Act in relation to these classes is of great importance to the trade. There can be no doubt that the working of the Trade Marks Act has not given satisfaction in Lancashire. Even if at times there may have been a disposition to expect too much, we think there have been substantial grounds for the dissatisfaction which has prevailed. The great bulk of the goods manufactured in Lancashire in respect of which trade marks are used is exported to other countries, and there can be no doubt that these marks fulfil important functions in the trade between Lancashire and India, and other countries. One chief complaint has been that the usages of the trade and the character of the markets where the marks are intended to serve their purpose have not been sufficiently kept in view by the Patent Office. By section 72, sub-section 2, the Comptroller is directed not to register, with respect to the same description of goods, a trade mark so nearly resembling a trade mark already on the Register with respect to such description of goods as to be calculated to deceive. It is on the question whether marks do so nearly resemble one another as to be calculated to deceive, and what extent of resemblance to an old mark ought to cause the rejection of an application, that the chief difference has arisen between the trade and those to whom the administration of the Act has been entrusted. The tendency of the Office has been to construe the words of the enactment more favourably towards applicants for new marks than the trade have thought right. We think the difference has arisen in part from the wording of the Act. The Comptroller has felt unable to say that the two marks "so nearly" resemble each other as to be calculated to deceive. He has thus not considered himself at liberty to take into consideration to the extent that he otherwise might the character of the market in which the mark is to serve its purpose. Two marks, when placed side by side, may exhibit many and various differences, yet the idea left upon the mind by both may be the same, so that a person acquainted with the mark first registered, and not having the two side by side for comparison, might well be deceived, if goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the

same mark as that with which he was acquainted. Take, for example, a mark representing a game of football; another mark may show the players in a different dress, and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade marked goods, and relying, as they frequently do, upon the marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing.

In order to avoid misapprehension in the future we recommend, even though it may not be absolutely necessary, a slight amendment of the Act, substituting for the words "so nearly resembling" the words "having such resemblance to;" and further we would suggest that when the question arises whether a mark applied for bears such resemblance to one on the Register as to be calculated to deceive it should be determined by considering what is the leading characteristic of each. The one might contain many, even most, of the same elements as the other, and yet the leading, or it may be the only, impression left on the mind might be very different, whilst, on the other hand, a critical comparison of two marks might disclose numerous points of difference, and yet the idea which would remain with any person seeing them apart at different times might be the same.

In this connexion we may refer to a point which has been the subject of considerable controversy, namely, how far registered or common marks when combined together are to be regarded as a new mark. We think that the juxtaposition of two or more such marks is not, if there be nothing more than this, a combination constituting a new mark. An important test appears to be whether the existing marks are so combined as to suggest a new idea. For instance, assuming a cat and a fiddle to be each an old mark, we do not think the mere representation of a cat and a fiddle together would be a new mark, but the representation of a cat playing upon a fiddle, the idea conveyed by which would be neither the cat nor the fiddle, but a cat playing upon a fiddle, would be a good combination, and might properly be registered. We think this view differs somewhat from that which has been at times, at all events, entertained by the Board of Trade, but it appears to us to be the sound one.

Where several common or open marks are worked into a single new design by being grouped together within a border or otherwise, we think that such a combination may be entitled to registration, but that it would be well to require that all the common elements should be disclaimed.

16. Much dissatisfaction has arisen from the variability of the practice of the Office in relation to the marks which are admitted to registration. In working a new system it is difficult altogether to avoid this, but we entertain a confident hope that if the changes we have recommended in our interim and in this Report be carried out, there may cease to be ground for this dissatisfaction.

17. Cases of hardship have sometimes arisen, owing to the Office accepting, at the instance of a later applicant, a mark which they have refused to an earlier one, and it has been suggested that before this is done notice should be given to the earlier applicant, and that he should have an opportunity of registering. We are very unwilling to recommend legislation which would seem to imply that the practice of the Office was thus from time to time to vary. We think that a record should be kept of refused marks, and that these, as well as registered marks, should be quoted against an applicant. We trust that in future such marks only will be rejected as ought to be refused to all applicants.

18. We have had under our serious consideration the question whether it would be expedient and possible to provide for the registration of what are known in the cotton trade as line headings. It is clear that it could only be done by an alteration of the law, making in that case the colours used an essential part of the registered mark. There appears to be a somewhat general concurrence of view, that if it were practicable to provide effectually for the registration of these headings it would be desirable to do so, but the most opposite opinions were expressed by persons of large experience in the Manchester trade on the point whether it would be practicable. We are disposed to concur with those who pronounce it impracticable, but whether this view be correct or not, we clearly cannot recommend the adoption of a scheme the practicability of which is open to such serious doubt. At the same time we are fully conscious of the evils to which our attention has been directed. Woven line headings no doubt play an important part in many markets; they become associated in the minds of buyers with the make of a particular manufacturer, or the merchandise of a particular merchant, and goods bearing particular marks obtain, on account of their proved quality, a high reputation in the market. Thereupon, some other manufacturer or merchant sends to the very

market where he knows this reputation has been acquired goods of an inferior quality bearing, not the identical heading, but one so resembling it as to leave on the mind of a person seeing it the same impression. He is thus enabled to undersell the merchant who originally introduced the mark to the market, whilst still securing a good profi for himself on account of the inferior quality of his goods, and this process often goes on until the very mark which gained the reputation is shunned by the buyers who at one time valued the goods to which it was attached.

Even those witnesses who have felt most strongly the impossibility of protecting line headings by registration have admitted the magnitude of the evil, and that these resemblances of headings, of which complaint is made, are not accidental, but intentional. We are satisfied that not only do individual traders incur loss from this cause, but that the trade of Lancashire suffers from it.

The imitation of headings, however, is not the only mode by which this kind of false representation is successfully carried on. We have had before us pieces of cloth, each of which bore different trade marks, tickets, words, figures, and other marks, but on which those trade marks, tickets, &c. were so coloured and distributed as to convey the impression, in the absence of careful examination, that the goods bore the same marks. No one looking at those pieces of cloth could doubt that the resemblance was intentional, and was designed for the very purpose of deceiving. Although we arrived at the conclusion that it would not be possible to give to line headings the protection of registration, we felt that the fraudulent trading to which our attention had been called ought not to remain unchecked, and that something ought to be done to remedy a state of things so detrimental to sound and honest trading; we, therefore, procured the insertion in the Merchandise Marks Act of a clause having for its object to bring these frauds within the penalties of the law and thus to check their practice. The clause has been the subject of a good deal of criticism, and some alarm has been expressed lest it should press hardly on persons acting with perfect honesty. We do not think this is likely to be the case. It is, of course, difficult so to frame a law as to make it effectual against wrongdoers, and at the same time to guard those who have no unlawful intention from all possible risk of inconvenience. The operation of the Act must, no doubt, be carefully watched, and it may well be capable of amendment, but we could not resign ourselves to the conclusion that mischievous frauds must be allowed to continue without even an attempt to put a stop to them.

19. Seeing that at least 90 per cent. of the marks in the Cotton Classes are registered either by Manchester houses, or by those having agents in that city, it is not unnatural that persons trading in Manchester should think that the work of registration in relation to these classes would, in the interest of the majority of those concerned, be best carried out there. In our interim Report we recommended that though the actual registration must be in London, and the ultimate responsibility that of the Comptroller, the head of the Manchester Office should pronounce a decision on all applications in these classes subject only to be overruled by the Comptroller personally where he thought the decision clearly wrong. The head of the Manchester Office is likely always to be in touch with the trade; and we think that if the system is worked in the manner and in the spirit which we have recommended it is likely to give greater satisfaction than it has hitherto done.

20. A strong case has been made out for permitting the applications in these classes to be made in Manchester. It is said that it would often save a great deal of time and trouble. We think that this may well be conceded considering the enormous proportion of applications that emanate from that locality. But until further experience has been acquired of the working of the new system, we think an application to the London Office should still be permitted. There will be no great trouble or inconvenience in transmitting these applications as soon as received to Manchester to be further dealt with there.

21. We have no hesitation in recommending that in cases where an appeal is allowed to the Court, parties within the jurisdiction of the Chancery Court of the County Palatine of Lancashire should be permitted to carry the appeal to that Court.

22. We have dealt in a subsequent part of our report with the question of word marks to which the evidence of Manchester witnesses was also directed.

23. One other point raised by the Manchester Chamber of Commerce remains for consideration; it is the suggestion that honorary assessors should be appointed to pass, or reject, all marks which have gone through the Office before they are exhibited to the public. We have carefully weighed this suggestion, but we are not prepared to recommend its adoption. There appear to us to be two important objections to it.

First, it would tend greatly to diminish the sense of responsibility of the Office, and next, we do not feel sure that the creation of such a tribunal with power to override its decisions would give general satisfaction. At the same time we think that if the Chamber of Commerce were to appoint a certain number of persons with whom the Office might communicate, taking care so to select them as to make them representative of all interests concerned, such a committee would serve a very useful purpose, and accomplish the end which the Chamber desires. The head of the Manchester Office would, no doubt, ascertain the opinion of such a committee on any question of novelty or difficulty so as to acquaint himself with the views of the trade, and though the responsibility for the ultimate decision would rest with him, we think that his administration would be likely to be in harmony with the requirements of the trade.

24. We will next proceed to consider the objections which have been taken to the law which now governs what may be registered as trade marks, and the important suggestions which have been made for its amendment.

25. By section 64 (1 c.) of the Act a trade mark may be registered which consists of or contains "a distinctive device, mark, brand, heading, label, ticket, or fancy word, or "words not in common use." Some controversy has arisen with reference to the meaning of the word "brand" as distinguished from the other words employed. There can be no doubt that the term derives its origin from the practice of producing some mark by means of burning, but it appears now to be in use in certain trades for the purpose of describing trade marks no longer produced in this way, and differing in no respect from the labels or tickets mentioned in the section; nevertheless a distinction has been made in the practice of the Office, and trade marks have been allowed registration in certain trades as brands when they would not be accepted in other classes as labels or tickets. We see no reason for this distinction. It does not appear to us to receive support from the language of the Act, and we think that in future brands should be dealt with in precisely the same way as labels or tickets.

26. The most difficult question which has arisen upon the enactment under consideration is to determine what may properly be regarded as "fancy words." Words are, undoubtedly, a most popular form of trade mark, but some limit must obviously be put upon the words which an individual may be permitted to register and claim the exclusive use of. The expression "fancy word" is certainly not a happy one, and has naturally given rise to considerable differences of opinion as to its meaning.

It will be convenient to consider first what words ought to be allowed as trade marks. There can be no objection to permitting the registration of an invented word not to be found in the vocabulary of our own or any other country. It seems to us further that existing words may with advantage be permitted as trade marks subject to limitations which at once suggest themselves. It is manifest that no one ought to be granted the exclusive use of a word descriptive of the quality or character of any goods. Such words of description are the property of all mankind, and it would not be right to allow any individual to monopolise them and exclude others from their use. Again geographical words, which can be regarded as descriptive of the place of manufacture or sale of the goods, are open to obvious objections. One manufacturer or merchant cannot properly be allowed to prevent all his competitors from attaching to their goods the name of the place of their manufacture or sale. The mischief would not be the same where the person seeking to register was the first who had manufactured or sold the goods in the place the name of which he seeks to appropriate as a trade mark. But there are objections to giving a monopoly even in that case, and to attempt to draw any such distinction would be likely to lead to difficulty and litigation. We think, therefore, that geographical names ought only to be permitted where they clearly could not be regarded as indicative of the place of manufacture or sale. We would add upon this point that we think that where any English word would be rejected as not entitled to registration no person ought to be permitted to register its translation into any other language. The question has been raised whether a word having the same sound as one entered on the Register, though differently spelt and with a different meaning should be registered. The question in such a case would seem to be whether the resemblance between the old mark and that applied for was such as to be calculated to deceive; if it were it ought, of course, to be rejected.

Our attention has been called to the rejection of words which it is said indicate the use to be made of the articles to which they are to be applied. As for example, "Mariner's Rum." We think that if the word sought to be registered would be understood as suggesting a special use of the goods or their adaptability to a particular purpose it would be objectionable as descriptive of their character.

Registration, it appears, is sometimes sought of devices which are descriptive of the goods to which they are to be applied, *e.g.*, a representation of a hinge to be applied to doors. We think these are not legitimate marks.

Complaints have also been made that where words have been refused as not being distinctive, they have afterwards been allowed where the applicant has applied for a mark consisting of the same word preceded by the applicant's name with an apostrophe. We think this course ought not to be pursued. Little or no mischief might result where the name of the applicant was an uncommon one, but where the name was a common one the result would be to deprive all persons bearing the same name of their right to use a common word in connexion with their own name, and even if the name were an uncommon one it would be impossible to say that there were not other persons bearing it who might wish to use in connexion with it the common word which it is sought to monopolise.

Evidence has been given that marks consisting of a combination of the applicant's name with the article he manufactures or sells are highly valued. There can be no doubt that if a manufacturer or vendor has obtained for his goods a reputation amongst the public he could, by process of law, quite apart from the Trade Marks Act, prevent goods that were not his from being offered to the public on the representation that they were so. But it would be quite a different thing to give by virtue of registration under the Trade Marks Act a right to prevent another manufacturer or merchant honestly describing his own goods by his own name.

It is said that there is often a desire to register short phrases, such as proverbs, &c., and that owing to the difficulty of finding new marks it is expedient that they should be allowed. We see no objection to this provided that they are in no way descriptive of the character or quality of the goods, or of their place of origin, sale, or manufacture.

There is said to be a general if not unanimous desire amongst those interested in the cotton classes that words should not be permitted to be registered as trade marks in classes 23 and 24. If the desire be so general as is represented, we see no reason in principle why it should not be yielded to. But there appears to be a serious difficulty in the way of making such a change at present, owing to the International Convention which has been entered into. We understand that word marks are registered in the cotton classes in some of the countries which are parties to the Convention; and there would be an anomaly in permitting such marks to be registered here when first registered in those countries, whilst registration is denied them if first applied for in England.

27. By section 64, sub-section 2, there may be added to any one or more of the essential particulars "any letters, words, or figures, or combination of letters, words, "or figures or of any of them." There is here, it will be seen, no limitation as to the letters, words, or figures, which may be combined with the essential part of a trade mark. By section 74, however, it is provided that nothing in the Act shall be construed to prevent the Comptroller registering as an addition to any trade mark "any "distinctive word, or combination of words, though the same is common to the trade "in the goods with respect to which the application is made." But this section enacts, sub-section 2, that "The applicant for entry of any such common particular "or particulars must however disclaim in his application any right to the exclusive "use of the same, and a copy of the disclaimer shall be entered on the Register." It has been said, and we think truly, that it is not easy to understand what is the exact status of the added matter provided for by section 64. Where the added words are not common to the trade in the goods with respect to which the application is desired, the right of exclusive use need not be disclaimed, yet it is presumed that the proprietor of the trade mark could not object to their use by any other person except in connexion with the essential particular of his trade mark. What purpose then do they serve? Perhaps they may be useful in the case of a colourable imitation of the essential particular. If with such an imitation the same added words were used it would assist the proprietor in establishing that his trade mark had been infringed. But the added matter may, it is assumed, be of so distinctive a character as to form an essential part of the trade mark, so that its use might be an infringement. We think it would clearly be desirable that the added matter, which the proprietor does not claim the exclusive use of, should be disclaimed so that the public may know exactly what is the trade mark registered. We think, too, that all disclaimers should appear in connexion with the mark in the Official Journal. Some misapprehension might perhaps arise if the person registering the mark were compelled to disclaim his own name or the foreign equivalent for it. We think, therefore, this might be excluded from the necessity of disclaimer, but it should be provided that the proprietor of the mark should not thereby acquire

the right to prevent any other person *bonâ fide* using his own name in connexion with his goods.

28. Section 67 should be amended by adding after the word "colour" in the first line, and at the end of the section, the words "or colours."

29. By section 69 notice of opposition to registration may be given at any time within two months of the first advertisement. The word "first" has been inserted by an oversight, and should be omitted. But apart from this clerical correction, it is suggested that the length of time allowed for opposition is too great, and unnecessarily delays the proceedings. It is said to be too short a time for communication by letter to and from Australia, and longer than is needed for the Continent of Europe, or America. Upon the whole we recommend that one month should be substituted. It is ample in ordinary cases, but to meet any special case we would add "or such further "time not exceeding three months in the whole as the Comptroller may allow." In the second sub-section we have no hesitation in recommending that one month should be substituted for two as the time within which in ordinary cases the applicant is to send in his counter statement.

30. In our interim Report we called attention to the undue impediment which in our opinion was thrown in the way of persons desirous of entering opposition by the requirement that in every such case the opponent should give a bond for 200*l*. We understand that the Board of Trade have in consequence diminished the amount of the security required. This was all that could be done without legislation, but we do not see why security should be required at all as a condition precedent of opposition except in cases in which a plaintiff in the Courts would be required to give security.

31. By section 71, where each of several persons claims to be registered as proprietor of the same mark the Comptroller "may refuse to register any of them until their "rights have been determined according to law, and the Comptroller may himself "submit, or require the claimants to submit, their rights to the Court." Prior to the passing of the Act of 1883 the late Master of the Rolls had laid down the rule that the Comptroller might register three old marks, *i.e.*, marks in use prior to August 1875, without the necessity of the parties resorting to the Court. It is suggested that this worked well, and though there is not complete unanimity of opinion on the point, we think the preponderance of reasons is in favour of reviving the practice as regards old marks.

32. Section 73 provides that it shall not be lawful to register as part of or in combination with a trade mark any word, the exclusive use of which would by reason of its being calculated to deceive, or otherwise, be deemed disentitled to protection in a Court of justice, or any scandalous design. The scope and use of this section are not very clear, and it does not appear to have been applied in any case. The Comptroller has submitted to us that it might be useful in certain cases if it were amended by omitting the word "exclusive." Words might be offered for registration in conjunction with a trade mark for which the applicant did not claim, and of which he would not be entitled to the exclusive use, but the use of which might nevertheless be calculated to deceive, and so be disentitled to the protection of a Court of justice. We recommend that this amendment should be made.

33. We think section 75 should be amended by inserting before the word "registration" the words "application for," and that it should be provided that registration should date from the application, and that the term should run from that date. This is at present in effect provided for by rule, but doubts have been entertained whether the rule is not *ultra vires*, and these doubts should be set at rest by legislation. The legislation should be made to cover the past practice.

34. A slight amendment of section 77 has been suggested with reference to trade marks in use before August 1875. No person can institute proceedings in respect of such a trade mark where it is incapable of being registered under the existing Act, unless he has obtained a certificate from the Comptroller that registration has been refused. Objection has been taken to the form of the certificate, which it is said tends to prejudice the proprietor, especially in proceedings abroad. It might be well to substitute for the words "a certificate that such registration has been refused" the words "a certificate that it is a trade mark incapable of being registered under the "Patents Designs and Trade Marks Act, 1883."

35. With regard to section 79, two amendments have been proposed. By sub-section 5, when a trade mark has been removed from the Register for non-payment of fee, or otherwise, it is nevertheless for the purpose of any application for registration during the five years next after the date of such removal to be deemed a trade mark

which is already registered. In the opinion of the Comptroller, five years is too long a period, and the term might well be reduced to one year. We agree with this view.

The other proposal is that where at the end of the term of 14 years for which the registration endures the renewal fee is not paid, and it is shown to the satisfaction of the Comptroller that it has remained unpaid by reason of the death or bankruptcy of the proprietor, the mark should at once become open to fresh registration. We see no objection to this proposal, provided it be shown that no person claiming under the deceased proprietor, or under the bankruptcy, is using the trade mark.

36. Section 70 provides that a trade mark "shall be assigned and transmitted only "in connexion with the goodwill of the business concerned in the particular goods "or classes of goods for which it has been registered, and shall be determinable with "that goodwill." By section 87 it is enacted that the person for the time being entered on the Register as proprietor of the trade mark shall have power to assign, grant licenses, or otherwise deal with the same. It has been suggested that this gives power to assign, or at all events, to grant licenses to use a trade mark apart from the goodwill of the business concerned in the goods for which it has been registered. Probably the two sections read together may receive a consistent construction, but in order to avoid doubt it would be well to amend section 87 by dealing specifically with trade marks, omitting the words as to granting licenses and providing that assignments are to be subject to the provisions of the Act.

37. Section 90 gives the Court power to amend an entry on the application of any person aggrieved by the omission, without sufficient cause, of the name of any person from any register kept under the Act. It is pointed out that a person may be aggrieved by the omission of other particulars besides the name of a person, but that the section is so worded that it is doubtful whether the court has power to supply any other omission. We think the section should be made more general, and should in terms apply not only to the omission of the name of any person, but to the omission of any other particulars from the register.

38. There appears to us no objection to a suggestion that section 91, which at present is limited in its operation to clerical errors, should be amended so as to permit a disclaimer by an applicant who is claiming a mark in respect of more goods than he really wishes it to apply to, without requiring him to go to the Court.

39. With regard to section 96 it was stated that it is sometimes impossible to obtain an exact copy of the mark as to which a certificate is desired, or at all events that it cannot be done without great trouble and expense, and that the Comptroller should therefore give a certificate in relation to a mark where as regarded minor particulars an exact facsimile cannot be produced by reference to the approximate representation stating in the certificate in what respects the registered mark differs. We see no objection to this.

40. By the International Convention entered into in 1884, it is provided that every trade mark duly registered in the country of origin shall be admitted for registration and protected in the form originally registered in all the other countries of the Union. And it is enacted by section 103 of our statute that any trade mark, the registration of which has been duly applied for in the country of origin, may be registered under that Act. There is a serious difficulty in the operation of these international arrangements. No common agreement has been arrived at between the countries who are parties to them as to the marks which are to be capable of registration. And the legislation which determines what marks may be registered differs in the several countries. The result is that we may be bound in this country, for example, to register a trade mark, the registration of which has been obtained in a foreign country, even though it be a mark the registration of which must be refused to a person first applying here as not being conformable to the requirements of our statute. We think this matter demands serious and immediate attention. It appears to us expedient that an effort should at once be made to arrive at a common understanding with the parties to the Convention, so as to secure as far as possible that the law should be uniform in all the countries which are subject to it. Independently of this, section 103 requires some revision, and this should receive attention when an amending Bill is introduced.

41. It has been suggested that there is a necessity for some statutory definition of the trade mark rights which are acquired in connexion with words used as the names of patented articles. Where a patent has been obtained for some article of commerce, and the patentee gives it a name which he registers as his trade mark, has he a right at the end of the term of his patent to prevent other people from selling it

under that name? It is clear that he obtains the patent upon the condition that at the expiration of the term of his monopoly the public should have the right to manufacture and use it, and if the only name by which it is known is that which the proprietor has registered as a trade mark, it would certainly seem inconsistent with the right thus intended to be conferred on the public if every one except the original patentee were prevented from calling it, or from selling it by that name which alone it bears. The authorities appear, however, to show that such a claim could not be maintained.

42. A proposal has been made that a simple system should be adopted of depositing labels or other printed matter, which should not give the rights which are conferred by the registration of a trade mark, but with respect to which a certificate might be given similar to that issued at Stationers' Hall, which could be used in support of a claim to copyright. From information which we have received as to the working of a somewhat similar system which has been for some time in operation at the Patent Office in the United States, we are led to the conclusion that the proposal if adopted would not be likely to be advantageous.

43. We have already dealt with the proposal made from Manchester for the creation under statutory provisions of a body of experts in relation to the Cotton Classes. A similar proposal has been made relating to other classes also. And it has been urged that if a trade committee were under statutory authority appointed in relation to each class the Act would be likely to operate more beneficially and to give greater satisfaction. We see no objection to the voluntary formation of such committees, and we have no doubt that the Patent Office would give due weight to any representation made by such bodies; but we cannot advise their being constituted under statutory authority.

44. Suggestions have been made that where the opponent of the registration of a trade mark is out of the jurisdiction, the obligation should be imposed on him of giving an address for service of proceedings in the United Kingdom; and also that an applicant out of the jurisdiction who obtains the registration of a trade mark, otherwise than under an International Convention, should be put under the same obligation. We approve of these suggestions.

45. It has also been suggested that where the validity of a trade mark is challenged in litigation, and the proprietor succeeds in maintaining his right to it, the court should give a certificate that the validity of the trade mark came in question similar to the certificate given in a patent case under section 31 of the Act; and that the same result should follow the certificate, namely, that in any subsequent action for infringement of the trade mark the plaintiff on obtaining judgment should have full costs as between solicitor and client. We recommend the adoption of this suggestion also.

46. Our attention has been directed to certain points connected with Sheffield marks, and the working of that part of the Act which provides for the action of the Cutlers' Company in relation to them. It was urged on their behalf that the power of registration which they now possess should be extended to all goods, of whatever description, in respect of which marks were sought to be registered by persons carrying on business in Hallamshire, or within six miles thereof. We do not see our way to recommend such an extension of their powers, but we are sensible of the inconvenience which may sometimes arise to traders in that locality from being required to register in different places marks relating to descriptions of goods which are often dealt in by the same persons. At present applications to the Cutlers' Company are limited to trade marks used on cutlery, edge tools, raw steel, or goods made of steel, or of steel and iron combined. We think that this definition might well be extended to include all metal goods.

47. By the second sub-section of section 81 the Cutlers' Company are to enter in the Register all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of the Act, but which have not been entered in the Register established under the Trade Marks Registration Act, 1875. This sub-section requires amendment by limiting the obligation of the Cutlers' Company to make these entries in the Register to those cases in which application is made to them in the prescribed manner to do so.

48. The Cutlers' Company further ask that a certificate, under the hand of the Master Cutler, should be of the same effect, for purposes of legal proceedings in relation to marks on the Sheffield Register, as the certificate of the Comptroller General. They point out that such certificates are commonly accepted in foreign Courts, and for the purpose of foreign registration. It is not a matter of much importance, but we do not think the request an unreasonable one.

49. Another point to which the Cutlers' Company call attention, is the necessity which exists for sending to the Comptroller a duplicate of each document relating to any application which the Cutlers' Company receive. It is suggested that it would be sufficient if a certificate were sent from the Cutlers' Company containing, in a prescribed form, the essential particulars which need to be communicated to the Patent Office. We think there should be no difficulty in a representative of the Cutlers' Company, and the Comptroller, arriving at an understanding which would prevent the necessity of transmitting more than was absolutely essential.

50. It has been pointed out to us that there would be some advantage in revising the fees payable in respect of registration by increasing the fee payable on application and diminishing the fee payable subsequently. The suggestion is worthy of consideration, but we cannot recommend that such a change should be made unless it appears that it would meet with the general approval of those interested in the registration of trade marks.

II.—Designs.

51. It has been suggested that the Office should no longer make any examination as to the novelty of a design presented to it for registration, but should register every design of which the applicant claims to be proprietor. We cannot recommend such a change. The balance of argument appears to us decidedly against it.

52. We are equally unable to give our assent to the proposal that the Register of Designs should be always open to public inspection. The most strenuous opposition to the proposal was expressed by the majority of the witnesses. They urged that it would afford great facilities to persons desirous of taking unfair advantage of the work of others. Great expense is often incurred in the preparation of new designs, and much skill employed in their production, and we were assured by those well able to judge that if free access were allowed to designs newly registered, unscrupulous persons would be sure to take advantage of it for the purpose either of pirating a design, or, without doing so, of approaching as near to it as possible, and so getting all the advantage of the labour bestowed upon it without being amenable to the law. We are satisfied that these apprehensions are well founded. Although section 52 (I.) provides that during the existence of copyright in a design the design shall not be open to inspection except by the proprietor, or a person authorised by the proprietor or the Comptroller, section 88. enacts that every register kept under the Act shall at all convenient times be open to the inspection of the public subject to such regulations as may be prescribed. There appears to be some inconsistency between these two sections. We think the later one should be so amended as to make it clear that the public are not to be permitted to inspect registered designs except under the conditions prescribed by the earlier section.

53. At the same time we think that where the Comptroller rejects a design on account of its being the same as one already registered, the applicant should be allowed to see the design or designs with which his own is alleged to conflict.

54. Objection has been taken by witnesses representing those interested in the application of designs to goods in the Cotton Classes to the requirements of section 51 that the goods should be marked with the prescribed mark to show that the design is registered. We are quite alive to the trouble which this may involve. It is, however, certainly of importance that there should, as far as possible, be notice of the registration of a design when it is protected by the law. It is true that in the Cotton Classes, owing to the mode in which the goods are dealt with, and the marks affixed, the protection afforded by a compliance with the terms of the statute is much less than it is as regards some other classes of goods; but we are not prepared to advise that such notice as the public now have should be diminished, or the proprietor of a design used in the Cotton Classes freed from the obligation which rests on other proprietors of designs.

55. Witnesses have called our attention to the fact that where a registered design, or fraudulent imitation of it, is without lawful license applied to goods, the real guilt rests commonly on the person giving the order for the application of such design, the person actually applying it being often a perfectly innocent agent. They have, therefore, suggested that section 58 should be amended by rendering any person who without license "causes" a registered design, or a fraudulent or obvious imitation thereof, to be applied, liable to the penalties imposed by that section. We think the suggestion a good one, and recommend its adoption.

56. Some difficulty appears to arise with regard to the form of the penalty imposed by section 58. That section provides that "Any person who acts in contravention of

" this section shall be liable to forfeit for every offence the sum of 50*l.* to the " registered proprietor of the design," the offence being "applying the design to any " article of manufacture, or any substance, artificial or natural." Where an order is given for the application of a design to a certain number of pieces of cotton or other goods it is probable that on the true interpretation of the section a distinct offence is committed in respect of the application of the design to each piece. It is pointed out that in such case the penalty of 50*l.* in respect of each offence is somewhat excessive, and that it would be better where the registered design is applied to several articles of manufacture in pursuance of the same order to provide that these several applications shall constitute only one offence, increasing the penalty in that case to 100*l.* We think this view a sound one, and recommend its adoption.

57. One small point only remains under this head. It is stated that according to the instructions of the Office an applicant is allowed to show no more than two views of the article for which he seeks registration. We think that in cases where the Comptroller is satisfied that more than two views are reasonably requisite to convey an adequate idea of the design which the applicant desires registered the applicant should be permitted to furnish an additional number.

58. We have to add that the Attorney General has been unable, owing to other public duties, to attend the meetings of the Committee, and he has therefore not taken part in the preparation of this Report.

We have the honour to be,
Sir,
Your obedient servants,

(Signed) HERSCHELL.
CRAWFORD.
MACNAGHTEN.
A. J. MUNDELLA.
H. DE WORMS.
JAMES F. HUTTON.

(Signed) EDWARD ROSCOE,
Secretary to Committee,
16th March 1888.

Board of Trade, Whitehall, Saturday, March 12th, 1887.

MINUTES OF EVIDENCE

TAKEN BEFORE

THE COMMITTEE

TO INQUIRE INTO

THE DUTIES, ORGANISATION, AND ARRANGEMENTS OF THE PATENT OFFICE SO FAR AS RELATES TO TRADE MARKS AND DESIGNS.

PRESENT:

LORD HERSCHELL.	RIGHT HON. A. J. MUNDELLA, M.P.
THE EARL OF CRAWFORD.	BARON HENRY DE WORMS, M.P.
LORD MACNAGHTEN.	JAMES F. HUTTON, Esq.

LORD HERSCHELL IN THE CHAIR.

Mr. COURTENAY BOYLE, C.B., called in and examined.

Mr. C. Boyle, C.B.

12 March 1887.

1. (*Chairman.*) I believe you have given some attention to the question of the working of the Patents and Trade Marks Acts so far as relates to trade marks?—Yes.

2. And you have made certain inquiries about the subject for the purposes of the Board of Trade?—I have had two conferences with the Trade Marks Committee of the Manchester Chamber of Commerce, at Manchester, and have reported to the Board of Trade the result.

3. You are able to tell us the principal points on which complaint has been made as to the working of the Act?—Yes. The principal point with reference to which the Manchester Chamber of Commerce complain is that the Board of Trade take a different view from the Chamber as regards what is similarity calculated to deceive. The Comptroller is not allowed to register a new trade mark if it is so similar to a trade mark which is on the register as to be calculated to deceive. The Manchester Chamber of Commerce, dealing entirely with the cotton classes, say that there is a totally distinct point of view as regards what is similarity calculated to deceive between them and the Board of Trade. I think I can illustrate that by referring to two marks. Their illustrations were multitudinous, and probably when you have the Manchester witnesses before you they will go more fully into the case than it is desirable I should do, but I will illustrate their contention by two marks (*handing same to the Committee*). They are really two test marks of the whole of the dispute. One is a bleaching mark and the other a dyeing mark. I am not a sufficiently technical witness to be able to tell you which is which, but the Manchester Chamber of Commerce say that there is such similarity between those two marks, that the one mark should not be registered without the consent of the owner of the other mark. They say that the consumers of the cotton goods supplied by Manchester are ignorant Indian natives; that they are not capable of testing differences which are not very distinct, and that they would not be able to see the difference between those two trade marks.

4. I suppose in certain cases they would not have the two together for the purpose of comparison?—No, certainly not.

5. So that the question would be the impression left on the mind as it were by the one when they saw the other?—Certainly. Here is a third one (*producing a trade mark*). That with the five men is No. 35,752; that with the dyers, three men, is No. 36,359, the one with the two men is No. 53,034.

6. (*Mr. Hutton.*) Is it not the case that the owner of 53,034 found that the other two were registered before him, and withdrew his mark, and said that he ought never to have had his design registered?—I think that is so. In those particular trade marks it certainly is the case that the owner of the new mark has withdrawn his application when he was made aware of the old mark. The applicant in this case, I think, and in similar cases, I am certain, has taken the view of the Chamber of Commerce and not that of the Board of Trade.

7. He says it ought never to have been registered?—Yes.

8. The two first are registered?—The first one is registered.

9. (*Baron de Worms.*) Is it not a fact within your experience of the registration of trade marks that it is extremely rare that a similar mark is voluntarily withdrawn, as in this case?—There are several instances in Manchester, but no other instance has come to my knowledge elsewhere. That is not a question which

Mr. C. Boyle, C.B.
12 March 1887.

I am very capable of answering; it had better be put to the Comptroller. Here are some other trade marks (*producing other trade marks*).

10. (*Mr. Mundella.*) These three, the first of which is a frog on a bicycle, the next a monkey on a bicycle, and the third, a cat on a bicycle, with a kitten climbing up behind, are registered?—Yes. There is another instance, and a very good instance, indeed, which I have sent for, namely, the Japanese football players. It is a mark which formed the subject of considerable conversation in Manchester. The question I asked in Manchester was this. I asked some of the representatives there whether having registered a duel they would refuse to register a *melée*, and two or three of them said yes, and that having once registered two men fighting they would refuse to register seven or eight men fighting.

11. (*Mr. Hutton.*) Were there more men playing in one design than another?—Yes, and under different circumstances, and of different nationalities.

12. (*Chairman.*) Is that the sole point, in different forms, or is there anything else?—That is the chief point at issue. The Manchester Chamber of Commerce say the Act is no protection to them at all; that, on the contrary, it leads to fraud and to trouble and difficulty in consequence of the way in which it is administered by the Comptroller acting on the instructions of the Board of Trade on the point of similarity. They complain very strongly indeed. The words of section 72, subsection 2, are "The "Comptroller shall not register with respect to the "same goods or description of goods a trade mark "so nearly resembling a trade mark already on the "register with respect to such goods or description "of goods as to be calculated to deceive."

13. (*Earl of Crawford.*) That leaves it really to the discretion of the Comptroller?—Yes, who is an officer of the Board of Trade, and applies to the Board of Trade for instructions how to act.

14. (*Mr. Hutton.*) What are the instructions under which the Comptroller acts in passing such marks?—I do not think there are any written instructions, I mean there are no carefully drawn out instructions. The Comptroller submitted certain marks, and before I came to the Board of Trade he was told, I am not sure that Baron de Worms did not sign the minute, that in the view of the Board of Trade there was no similarity between those marks, and that case has governed his action since. There have been no formal instructions.

15. (*Chairman.*) The difficulty to some extent seems to arise from the wording of the section, because it must be so nearly resembling as to be calculated to deceive. It may be possible that looking at the custom of the trade, and other matters it would be calculated to deceive, though there be no very near resemblance, but of course the Board of Trade would be governed by the language of the section?—Yes.

16. Are there other points at issue between the Board of Trade and the Manchester Chamber of Commerce, if so will you be good enough to put us in possession of them?—The next point is that the Manchester Chamber of Commerce complain very strongly that the negotiations preliminary to registration are conducted more in London and less in Manchester than they should be. They say that more discretion should be left to Mr. Fry, the representative of the Comptroller in Manchester. I think with a little care and consideration a good deal of effect might be given to their wishes in that respect.

17. How far is Mr. Fry empowered to act without the Comptroller?—What I think might be done is this. The Comptroller must keep in his hands the ultimate act of registration; he is responsible. There can be only one responsible officer. I do not think the Board of Trade would like to recommend or suggest to the Committee that there should be one responsible officer in London, and another responsible officer in Manchester. That probably would lead to very great difficulty indeed. But I think the inquiries, the negotiations and the interviews that are necessarily preliminary to the registration of a trade mark might be done to a larger extent in Manchester than they are at present.

18. Would there be goods of the same kind as some of those that go from Manchester, going from other places?—The very large majority of applications in the cotton classes come through Manchester.

19. But some would come from Scotland for example?—A few.

20. You must have one central control, otherwise you might have the Manchester office accepting a mark which was exactly similar to one from Glasgow?—Yes; I believe the proportion of cases not emanating from Manchester is very small indeed, but still there is a proportion not emanating from Manchester, and in view of that, and also in view of other difficulties, I am inclined to think the Comptroller must be in London and the ultimate act must remain with him.

21. Subject to that necessity, your view would be that all that could be done in Manchester, should be done in Manchester?—Everything that could be done in Manchester should be done in Manchester.

22. (*Mr. Hutton.*) Perhaps you may remember about two or three years ago when Mr. Chamberlain was here, the Glasgow Chamber was willing that the registration of the trade mark, or the preliminary inquiry into the registrations should be wholly conducted in Manchester, and that they were perfectly content with that?—Yes.

23. Can you tell us the number of applications that come from Manchester in the year?—I can furnish you with that, but I am not the Comptroller. It only comes in case of dispute to the Board of Trade.

24. I think the number registered last year from Manchester was something like 1,600. There are over 60,000 Manchester marks?—That points both ways, because if you made it too difficult to get a new mark on the register you would have an outcry from the other side. If you were so to alter the Act as to make it difficult to get a new mark on the register the merchant seeking to get a new mark would exclaim from that point of view.

25. (*Chairman.*) It may possibly be met by a wider discretion, altering the Act, taking out "so "nearly resembling as to be calculated to deceive," and providing that he shall not register "with respect "to the same goods a trade mark calculated to "deceive?"—However you word it, if you leave that discretion in the Comptroller you get into difficulty. There is sure to be some mark so near the line as to be cause of complaint.

26. No doubt that must always be so however you word it. The provision as it at present stands rather fetters his discretion. It is "so nearly resembling it." It compels him to see that it must "nearly resemble?" —I am prepared to ask the Committee to consider whether any such duty should be thrown on the Comptroller at all; whether his duty as to trade marks should not be the same as his duty with reference to patents; that he should have no duty at all of examination, no duty of settling whether there is any similarity, but simply that he should register for what it is worth after the prescribed period of opposition has expired.

27. (*Lord Macnaghten.*) With whom would you leave that?—That question must be fought out in the courts as it is in the case of patents.

28. (*Mr. Hutton.*) It was suggested in Manchester that there should be a committee of experts to arbitrate on any questions which might arise?—What was suggested by the Board of Trade was that something of the same sort should be done, not that there should be actually a committee of experts appointed which might lead to a little difficulty, but that Mr. Fry, the representative in Manchester of the Comptroller, should conduct all preliminaries, such as inquiries as to consent or refusal of owners, correspondence, or negotiations as to disclaimers of headings and words in Manchester by seeing, as he does continually, the representatives of the Manchester trade. There would be no formal action of the committee, but con-

tinually negotiations between the representative of the Comptroller in Manchester and the Manchester merchants.

29. (*Chairman.*) Are there any other points which have been raised by the Manchester Chamber of Commerce?—Yes, there are one or two matters. The next is this: There is an appeal to the court under section 90. The court has to rectify the register. The word "court" is used in several sections of the Act and it is desired by the Manchester Chamber of Commerce that the word "court" in the Act should include the County Palatine Court.

30. In cases coming from Manchester?—Yes, so that they should take their appeal to the County Palatine Court instead of coming up to London. That is purely a legal point. The Board of Trade said they would ascertain what objections, if any, there were to that.

31. (*Mr. Hutton.*) There is another thing I think which they want; they want the onus of proof put on the new applicant. At the present time if an application is made to register a trade mark, it is the owner of the old registered trade mark who has to come up to London and defend his case in London?—That state of affairs I think occurs from the difference of the point of view of the Board of Trade and the Manchester Chamber of Commerce. The Board of Trade say there is no resemblance between the two marks, and therefore they put the new mark on the register. The Manchester Chamber of Commerce say there is a resemblance, and you ought not to have put that on the register without the assent of the owner of the old mark. I do not think there is much difference as regards the onus, but there is a difference as regards the similarity, and that leads to a difference as regards the onus.

32. It compels the registered owner in Manchester who has been enjoying the use of his trade mark for many years to come up to London and to test it there?—Yes.

33. With some new applicant who wants to pirate his design?—Only in cases in which the Comptroller acting on the advice of the Board of Trade thinks there is no similarity.

34. That would be overcome by the whole of the process, until final registration, being conducted in Manchester. You would have to appear simply in Manchester instead of coming up here. That is one strong grievance which they feel?—The appeal against the decision to register is to the Board of Trade.

35. The final appeal?—The appeal is to the Board of Trade.

36. He appeals first to the Comptroller?—He has to come to the Comptroller.

37. There is another point. They think that the Comptroller should be a man practically acquainted with the trade and not a judicial authority. Mr. Fry, I understand, is a man who has some practical acquaintance with the trade. He has been in India and has seen the working of the trade marks in India, and for that reason he is very well acquainted with the peculiarities of those trade marks?—That is so.

38. I gather from the information given to me that his duty in the case of a new applicant is to ascertain whether there are certain marks likely to infringe?—Yes, he has interviews with the owners of the old mark to ascertain whether there is any objection on their part.

39. (*Lord Macnaghten.*) Of course if there is the faintest shadow of resemblance they object?—Sometimes they object in this way. They say we have no objection to your using that mark in certain markets; as long as you do not come into our market we do not object. That brings me to one more point. Very often limitations on consent to user of marks occur in the correspondence; that is to say, an owner of an old mark writes to us, I do not object to the use of this new mark, provided that it is not used in such and such a market. That is an instance of the limitation. There are several others which you will ascertain from the Manchester witnesses when they come. The Manchester Chamber of Commerce desire that those limitations of user should be endorsed upon the mark.

40. (*Chairman.*) That is to say that there should be power to register the mark, subject to certain limitations?—Not only that, but to register the mark and also to register the limitation.

41. (*Lord Macnaghten.*) To register it on the face of the mark?—Yes, or to endorse it.

42. Do you mean that the mark should carry with it the limitation?—The mark should carry with it the limitation.

43. (*Mr. Hutton.*) The present system is simply to put "limited" or "consent obtained"?—"Consent obtained," and then the terms of the limitation are kept with the papers. What they would require would be that the limitation should be endorsed upon that document (*producing an application*).

44. (*Chairman.*) Do they want the limitation to appear upon the mark itself, or merely upon the face of the document?—On the document, that it shall be a part of the registration.

45. (*Baron de Worms.*) In what way is it a limitation, is it as to where it is to be used?—That is one limitation.

46. What is the other, as to time?—Time would be another.

47. (*Chairman.*) There was some case for the Board of Trade, in which I was engaged when I was Law Officer, about an agreement containing a limitation which came, I think, before Mr. Justice Chitty?—I do not recall that at present. We could look that up.

48. I know this question of limitations was somewhat considered in that case. Of course there is no power now to register any limitation upon the face of the register?—Section 85 says, "There shall not be "entered in any register kept under this Act, or be "receivable by the Comptroller, any notice of any "trust expressed, implied, or constructive." So that the Board of Trade thinks what the Manchester Chamber of Commerce desire could not be done, having regard to the words of that section.

49. My impression is that the very question came before Mr. Justice Chitty. I remember the section being cited. It was a case where an agreement had been come to that it should only be used, I think, for a particular market?—Very likely, I am afraid I do not remember the case.

50. I rather think the question arose as to its being registered by the Comptroller?—I will look it up for you.

51. It would be an alteration of the law, but it may very likely be a convenient one. A man who desired his mark only for a particular market might say there is no objection to the registration of something which might be similar and objectionable if it went to that market, if it were only to be used for another market?—If you ask me, I should be sorry to give an opinion one way or the other. I think you should ask the scientific witnesses about that. It might lead to a deal of complication if you had registrations of limitations, more or less involved and conditional, made a legal act.

52. Probably it would not lead to difficulty at the office; it might of course lead to litigation afterwards?—It would not lead to difficulty in the office, because the limitations now exist on the papers. It is not part of the registration, but the limitations are filed with the rest of the papers, so that anybody who likes can turn to them.

53. (*Mr. Hutton.*) The result would be this, that the owner of the registered trade mark would refuse to allow any house to use that mark unless he could get the limitation of the mark on the register?—Yes.

54. (*Chairman.*) Probably as the matter now stands it might be questionable whether any such limitation would give a legal right to the owner of the first mark to object to the use of the second in one of the prohibited markets?—I should doubt whether it would.

Mr. C. Boyle, C.B.

12 March 1887.

55. Of course what is asked is that there should be such a right to object?—Yes, that is what is desired in Manchester.

56. (*Baron de Worms.*) Supposing a limitation really existing, and a man were debarred from using a certain trade mark in a certain country, or that the trade mark should not be used in England, but that it might be used in China, and the merchant in China exported it from China to England, would that be an infringement?—That would be a question.

57. Would not the first person who had given the limitation have a right to come down to the Comptroller and say, this is in distinct contravention of the agreement, and this trade mark ought now to be cancelled?—Once on the register there is no power to cancel it.

58. (*Chairman.*) I take it is clear under the existing law that you could not do it?—I do not think you could.

59. (*Baron de Worms.*) But they do do it?—They give the limitations, but they are only agreements or understandings. I do not think they are more than that.

60. I take it that there are limitatioms at present?—Certainly.

61. Are those limitations registered with the trade mark?—They are filed with the trade mark. They are kept with the documents.

62. (*Chairman.*) When you say the limitation is filed, what happens is this: there is an agreement between certain parties. In consideration of your undertaking not to export goods with your trade mark to a particular market, I will not object to that trade mark being registered?—Then the trade mark is registered, and a record is kept of that understanding.

63. The record of the office does not give any additional validity to that agreement?—None whatever.

64. If the right can be enforced at all it could be enforced only because there is an agreement between the parties?—Exactly so. The keeping of the record at the office is merely for convenience and nothing else.

65. (*Baron de Worms.*) There is another difficulty which appears to me to arise out of that. Mr. Mundella tells us that various articles were stamped with the same trade mark. If a trade mark were granted with a limitation for piece goods, the same trade mark might be applied to stockings?—It is a separate act of registration in each class.

66. Although it is the same trade mark?—Yes; a trade mark is only similar to another trade mark *quâ* a particular class.

67. Mr. Mundella did not seem to understand that, because he said one trade mark would cover a multitude of things shipped by the same person, but not naturally the same goods?—Mr. Mundella would, I think, understand that each trade mark is the trade mark for a class.

68. (*Chairman.*) The same trade mark does frequently apply to a number of goods; that is to say, a particular house abroad orders goods in different classes, all to be marked with the same trade mark?—Certainly.

69. But then in order to carry that out, that trade mark has to be separately registered in each of those classes?—Yes, this is what occurs; the owner of a trade mark if he gets a good trade mark registers it in several classes, and then he is the owner in all those classes, but one man may be owner of a trade mark in one class, and another may be the owner of exactly the same trade mark in another class.

70. (*Baron de Worms.*) Supposing I register a frog on piece goods, and at the same time I, as a shipper, export stockings with the same mark, the same frog, do I require a separate registration for each mark?—Yes.

71. (*Chairman.*) Of course, supposing the frog had been registered in one class only there would be nothing to prevent anybody else registering the frog in any other class?—Nothing whatever.

72. If you want to cover more classes than one, you must register it in the several classes?—Certainly.

73. (*Baron de Worms.*) If the piece goods are of different lengths, as at Manchester, bearing the same mark, if they are all piece goods they only require one registration?—That is all.

74. If a limitation exists for one kind of piece goods with the same mark, would that limitation cover piece goods of a different quality bearing the same mark?—Yes, every quality in the same class.

75. What is the position of the Comptroller with regard to that agreement if it is for the same goods?—He simply keeps it, he has no official knowledge whatever, he simply keeps it for convenience.

76. Then I do not see the advantage?—It is for the convenience and for the satisfaction of other people.

77. (*Chairman.*) Inasmuch as you cannot do now what they want, you assist them as far as possible to do it for themselves?—Exactly.

78. Is there any other point you wish to bring before us?—Yes. At present there is an appeal against the decision of the Comptroller not to register. Where the Comptroller refuses to register there is an appeal to the Board of Trade, and the Board of Trade may refer the appeal to the court. But there is no appeal in the case of a decision of the Comptroller to register. So that anybody objecting to a registration has no appeal to the Board of Trade. The appeal to the Board of Trade is a convenient way of dealing with simple appeals. As the Lords Justices held the other day the Board of Trade rightly exercise their powers under the section, and they do as a matter of fact refer any case of difficulty or intricacy to the Courts, but it is found to be for the convenience of parties that simple ordinary cases of appeal should be to the Board of Trade, and the Manchester Chamber of Commerce desire that there should be an appeal to the Board of Trade not only in the case of a decision of the Comptroller to refuse to register, but in the case of a decision of the Comptroller to register.

79. (*Lord Macnaghten.*) I suppose an appeal to the Board of Trade is an inexpensive proceeding?—I have heard appeals in the way of friendly conversation across the table.

80. They do not come with solicitors?—Yes.

81. (*Baron de Worms.*) But not with counsel?—They come with solicitors, but not with counsel.

82. They come with solicitors very often?—Yes, but not with counsel. There is one more point I wish to bring before you. The Manchester Chamber of Commerce object to the use of word marks. Word marks lead to endless litigation. They are very troublesome. There have been several cases before the courts lately.

83. Do you mean a fancy word?—It must be a fancy word; nothing can be registered but a fancy word. What is a fancy word is an extremely difficult question, as the "Melrose" and the "Electric" cases will show. What is, and what is not a fancy word is a matter of very great difficulty, and the Manchester Chamber of Commerce desire the absence of the use of the word marks in the cotton classes.

84. (*Chairman.*) Do you suppose that would be generally or universally acceptable?—Their objection only applies to the cotton classes; they do not express any opinion upon other classes.

85. From the fact that they object, I suppose there are some people who desire to register words?—The Board of Trade have heard nothing on the other side, but as far as we know it is the view of the cotton trade that there should be no registration of word marks in the cotton classes.

86. Are there many word marks registered in the cotton classes?—Yes, a good many.

87. We should have to hear some of the people on the other side?—I think so, certainly. That would only apply to the cotton classes.

88. Supposing it is a real fancy word such as "Abracadabra," or something of that sort, what is the objection to that?—I think the objection is that it is

not easily appreciated on the cotton goods. The consumer does not get it in his mind at all; he goes by the mark and not by the word, and therefore it is better that there should be no word mark at all. Anybody reading the decision of the Court of Appeal in the "Electric" and "Melrose" cases will find even after that decision it is very difficult to know what is a fancy word. The Comptroller has now to determine upon some hundreds of word marks which are before him, and how he will get through it I do not know.

89. (*Mr. Hutton.*) Such words have been registered as "Reliance," "Unsurpassable," "Velveteen," "Nonpareil," "Best in the World," and so on?—After the decision in the "Electric" case there were very few of those words taken. I should think all those words would now be refused at once, "Nonpareil" certainly. The Comptroller has an enormously long list which has been waiting over for this decision, and he has now to deal with them.

Mr. C. Boyle, C.B.

12 March 1887.

The witness withdrew.

Adjourned.

Board of Trade, Whitehall.

Saturday, March 19th, 1887.

PRESENT:

LORD HERSCHELL.
THE EARL OF CRAWFORD.
LORD MACNAGHTEN.
THE RIGHT HON. A. J. MUNDELLA, M.P.
JAMES F. HUTTON, Esq.

LORD HERSCHELL IN THE CHAIR.

Mr. HENRY READER LACK, called in and examined.

Mr. H. R. Lack.

19 March 1887.

90. (*Chairman.*) You are the Comptroller of the Patent Office under the Act of 1883?—Yes.

91. As Comptroller you have jurisdiction over the Designs and Trade Marks portion of the Act as well as the Patents?—Yes. I think the title runs "Comptroller General of Patents, Designs, and Trade Marks."

92. The questions that arise under the Patents Act come ultimately before you for determination if there is any question about them, subject of course to an appeal to the Board of Trade?—Yes, that is unless I am away. In my absence the Registrar would act.

93. If you are there you would be the person in the office who would have ultimately to deal with the matter, whether it originated in Manchester or in London?—Yes.

94. I believe you are aware of the dissatisfaction which has been expressed at Manchester with regard to the working in some respects of the Act?—Yes.

95. Will you state to the Committee what observations you have to make with regard to the questions that have been raised by them?—The chief difficulty with regard to Manchester is that the courts do not hold the same views as the cotton trade. That is really the whole difficulty. The cotton trade would wish a much more restricted view taken than either we take or the courts take.

96. That is to say, they would wish trade marks not to be registered subsequent to prior trade marks which you feel yourself bound to register, and which the courts have held you are bound to register?—Yes, that is so. For instance, if I have a mark consisting of a single figure they contend that I ought to refuse all other marks consisting of single figures though they might represent different nationalities, or otherwise be in my opinion distinct.

97. You consider that you are not entitled to refuse to register except in the case where there is a near resemblance?—Yes, "calculated to deceive." That is under section 72.

98. It would not be enough to show that, having regard to the practice of the trade, and the mode in which the marks are used, it would be calculated to deceive, unless there was also proof of near resemblance?—No. We have had a great deal of correspondence on this point, and I have brought the volume which contains the whole of the correspondence between the Manchester Chamber of Commerce, and the Committee of Experts, and the Commissioners of Patents from the beginning to the end which will give you a great deal of information on the subject. (*Handing same to the Committee.*)

99. (*Mr. Hutton.*) That is since the Act?—Yes. At the commencement the cotton trade represented strongly that they would desire not to come under the Act.

100. (*Chairman*). We gather from the representations which have been made by the Manchester Chamber of Commerce that two trade marks, although in the sense in which you have used the words they would not nearly resemble one another, yet may be calculated to deceive, as producing the same general impression by the effect of the design?—That is their view, I think. On the other hand, I am bound to say that I have been told that the nations in the East, especially the Japanese and Chinese, are very acute in distinguishing small differences.

101. Of course you are not in a position to say how far the view taken by the Manchester Chamber of Commerce is practically borne out by the facts?—No I am not.

102. Do you observe that there appears sometimes to be a trade mark, subsequently registered, apparently suggested by the prior trade mark, although differing very materially from it?—Yes. The applicants for trade marks may be divided broadly into two classes; those persons who are wishing to get a really good and distinctive mark for themselves, and the others those who are trying to get as near as possible to some mark which has already obtained reputation in a market.

103. As far as you can judge, are there a good many of the latter class?—Yes, there are a good many; and I know, as a fact, that orders are sent home to send out goods of an inferior description, with a mark put on these goods as nearly resembling such and such a mark as they think they can go.

Mr. H. R. Lack.

19 March 1887.

104. And yet the second design has sometimes very distinctive characteristics that are not to be found in the earlier one?—It may be the same idea carried out by different objects. Take, for instance, a see-saw mark with a girl and boy upon it; then they put perhaps a frog and a cat, but there would still be the see-saw mark. The cotton trade would say that is a see-saw mark, and ought not to be taken.

105. That is to say the mark comes to be recognised by a verbal description of it?—Yes, it may get that brand in the market.

106. And then another mark which would be verbally described in the same way, though with some very characteristic differences, would really, or might at all events, deceive the purchasers?—Yes, it might deceive. The question is whether the cotton trade could have any special legislation.

107. Does this only apply to the cotton trade?—Only to the cotton trade. On the other hand no system of registration will prevent dishonest people from infringing marks without registration. A dishonest person would certainly never come for registration under any circumstances, if he intended to copy.

108. Some of your applicants do, as far as you can judge, come with the idea of getting it as near as they can?—Yes, but I intended to say, to actually copy. Bass's marks are copied exactly, the scarlet triangle. They are stopped by prosecution.

109. There are some people, you think, whose consciences would be satisfied if they were using a mark which they had registered, although they had registered it because it somewhat resembled a prior mark which had got a reputation?—That is so.

110. That deals with the most important point which has been raised by the Manchester Chamber of Commerce; is there any other point raised by the Manchester Chamber of Commerce, on which you would make any observations?—The first point is as to the possibility of providing special legislation for marks used in the cotton trade. They have also a great objection to the use of any word marks, because they say that word marks have been so generally used in the trade that no word can be said to be fanciful or descriptive in their trade. So many thousands of word marks have been in use that they wish word marks to be excluded; words, letters, and figures.

111. I am not quite sure that I understand that objection. Supposing a vast number of words have been used, and an applicant gets a new word registered, how does that prejudicially affect anyone but himself?—They say that you could not get a new word at the present day unless you coined a word.

112. Supposing you could not, who suffers from that except the person who has registered a word which will not be distinctive?—I do not know. Of course an English word when it goes abroad becomes an unknown tongue to the Chinese and Japanese. At the date of our collecting the marks, which were in use before the passing of the Act, that is in 1877 and 1878, we did not make a collection of word marks; we had not a complete collection of word marks in use in the trade, we had a complete collection of designs and devices.

113. You mean that an applicant might now apply for the use of a word which, although you would not know it to have been a word previously in use, might have been previously in use?—Yes, which was the property of an old trade-mark owner; and we should have to make a collection, if we could, of word marks which were in use before the 13th August 1875, and then determine which of those were common, owing to their use by more than so many people, and which were really private property, then we could go on with word marks. The next point is with reference to the oppositions being tried by the Palatine Court.

114. You mean instead of the High Court in London?—Instead of coming to town, because it is very expensive to Manchester merchants and a great waste of time, and they would be able to put their cases much better before the court in Manchester, having all the materials at hand, than they are able to do now by getting up cases and coming up to London.

115. Do you see any objection to that?—No, I do not. Patent cases are tried there now.

116. What is the next point?—That is as regards Manchester. I do not know whether you wish me to make any general remarks on the Act.

117. Certainly?—Of course before the passing of the Act of 1875 anybody could get protection for any mark he used. There was no definition of what a trade mark was; provided he had used it another person could be restrained from using the same mark to his disadvantage. Then by the Act of 1875, as continued by the Act of 1883, under section 64, there is a duty imposed upon the Comptroller. The Comptroller first of all has to see whether the marks presented contain certain essential particulars which are given under A., B., and C., and in carrying out the last one, C., as to the distinctive device, I have power, and have exercised that power, to refuse marks which do not appear to me to be distinctive. Your Lordship will see that fancy words come in that section too; they give a great deal of trouble. I may, perhaps, refuse to register marks for a person which really may be good enough for trade purposes.

118. As not being fancy words?—As not being fancy words, or not being what we consider a distinctive mark.

119. What do you understand by a distinctive mark?—A distinctive mark applies more to labels than trade marks. Of course there is no difficulty with ordinary trade marks, such as Allsopp's hand or Bass's triangle, or a single figure or object, but when you get to more than one, to complicated objects, and labels, then it is more difficult. What I consider not distinctive would be ordinary labels used in trade, such as pill-box labels, or ordinary labels used on scent bottles. In every trade there are labels which are not distinctive, but I have to decide where to draw the line between distinctive and not distinctive marks, and it is quite possible that I may refuse marks which other people might take, and which are sufficiently good for trade purposes.

120. That of course must be a matter of judgment?—That must be a matter of judgment.

121. But with regard to the fancy words?—I have to follow the decisions of the court.

122. That has given rise to a good deal of litigation?—Yes, because it is almost impossible now to say what is a fancy word. Then the next duty imposed on the Comptroller is to say, under section 72, whether the mark so nearly resembles a trade mark already on the register, and again there I may refuse marks which may be sufficiently distinct. With regard to that there are not so many absolutely refused.

123. The great complaint there rather is that you do not refuse enough?—Yes, I find that in the year 1885, out of 8,000 applications, 1,265 marks were refused or accepted with modifications.

124. (*Mr. Mundella.*) How many of that 1,265 were finally accepted with modifications?—I have not more detail than that.

125. I suppose you have no doubt that a good many of those which you ultimately accepted with modifications had no intention of being colourable imitations of any other marks?—No.

126. The resemblance, I suppose, would be accidental in many instances?—Yes, I was coming to that point. You see there are two disadvantages under the Act. By registration the trade marks which are in use in all the trades in the country are brought together, that is to say, the marks used by the retailers as well as by the merchants: the wholesale marks. It happens very often that a small shop keeper in the country wishes to have a trade mark, really it is not necessary, but he wishes to have one, and he sends up and has a trade mark registered for some article. Then a merchant, applying subsequently, without knowing this, would be refused the same mark, and the merchant is therefore refused a good

mark probably on account of this small tradesman at Westward Ho or Spilsby having registered the mark. Another disadvantage is that it brings the marks together, which are used in all foreign countries. They are all brought together here, and, if I could register for different markets, for South America, for Africa, for Japan, Burmah, and China, I could take six or eight similar marks without doing any damage to anybody, but as the Act stands, if I have a mark, say a diamond, for goods for one market, it excludes that for other owners without the applicants make arrangements outside the office and give consent.

127. (*Chairman.*) In many cases, as far as the merchants are concerned, they do only want marks for a particular market or markets?—Yes, those trading with East India and China and Japan would not want to go to South America or the West Indies.

128. (*Earl of Crawford.*) You could not be certain of that, that the goods which were got for China did not go to Peru?—We could not be certain.

129. (*Mr. Mundella.*) And you do not register for markets?—No.

130. And you do not advocate that you should register for markets?—Well, I do not know. They might be transhipped.

131. Supposing the purchaser at the market bought a cargo or a number of bales of goods registered for that particular market, what is there to prevent him, when he has bought them, doing what he pleases with them and transferring them to another market?—Nothing.

132. (*Chairman.*) Still you do find that the merchants, who would be able to judge of that themselves, are constantly willing that a similar mark should be registered, only it is not to go to a particular market?—Yes.

133. That is generally the nature of the agreements that are entered into for the purpose of arranging an opposition to a trade mark?—Yes.

134. At all events in part the difficulty that you have pointed out, perhaps to a great extent, would be met by allowing marks to be registered limited to the United Kingdom or if sent abroad?—Yes; they ought really to protect themselves abroad by registration in the foreign countries, but there being no registration in India, China, and Japan, and other eastern countries, they take what protection they can here.

135. What I meant was that in the case you have put of a tradesman registering a mark here, simply for retail business, it would be immaterial to him that somebody else registered the same mark for an export trade, wherever the export trade was?—Yes.

136. Therefore, although there would be a difficulty in registering for a particular market abroad, and allowing the same thing to be registered for another market abroad, perhaps the same difficulty would not exist, in the case of a registration, merely for home-trade by a retail trader and by a merchant for his export business?—No.

137. (*Mr. Mundella.*) Is there any uniform rule or law as to registration in our colonies?—Most of the colonies have adopted the Trade Marks Act, 1875, in some shape or another, and most foreign countries have trade mark laws, but not the East.

138. Is it necessary for a British subject to register his trade mark in our various colonies?—Yes; it is necessary.

139. Registration at home is no registration in a colony?—No.

140. (*Mr. Hutton.*) In India it is?—In India they have no trade mark law. There is the common law. They had a Bill introduced some years ago, but it was given up.

141. (*Mr. Mundella.*) Has it come under your notice that there is a great deal of poverty of invention on the part of persons who submit to you trade marks?—Yes.

142. There is a very large field, an unexhausted field, from which persons might draw trade marks if they desired to do so?—Yes, but they seem to be entirely wanting in that respect. For instance, in applications for marks for butter, they nearly always ask for the representation of a cow or trefoil or something of that sort. They run on the same lines.

143. (*Earl of Crawford.*) After all natural objects are limited with regard to any single definite object?—Yes.

144. (*Chairman.*) Where an undertaking is come to, to withdraw an opposition upon a certain agreement as to the use of the trade mark, do you ordinarily enter that in the register?—No. The agreement is filed with the papers for reference, but no note is made on the register, nor is any public notice given by advertisement.

145. In certain cases you have been ordered by the court to insert the note on the register?—Yes; in one or two instances. There may be others, but I do not always see them.

146. Is there any other point with reference to the Act?—I think I ought to draw your attention to the existing definition of what may be registered. It seems to me that it is too restrictive for trade purposes, that is section 64. In the present day people say that it is almost essential to have a trade mark for any new thing that is brought out, and the most convenient way is to give it a name. As the Act stands now I am unable to take names, for example I could give you the "Abbotsford" stove, and the "Otto" gas engine.

147. (*Lord Macnaghten.*) Those are very distinct?—Yes.

148. The Otto gas engine is a description?—Yes, it had become descriptive. They were quite good enough for the trade, that is the difficulty.

149. (*Chairman.*) A descriptive mark is one which you would not be entitled to register?—No. "The Otto" as describing a class of engine, would be descriptive, and that would not be registrable, but I refer to when it first came out.

150. (*Earl of Crawford.*) Am I right in saying that if a man invents a thing, and puts his name on it, that is not sufficient?—At present under the recent decisions, unless the word is a meaningless word or not descriptive, I could not take such a new word.

151. Take a case like this, a dynamo machine with the word "Ferrante" on it?—I could not register that unless it were meaningless.

152. It is the name of the man?—The name of the man would not be a fancy word.

153. The Act says "A trade mark must consist of "or contain at least one of the following essential "particulars (*a*) a name of an individual or firm "printed, impressed, or woven, in some particular "and distinctive manner."?—It is very difficult to print the name in a particular manner.

154. Suppose it is cast or impressed?—It must be impressed in some particular distinctive manner. In some few instances, such as a name formed of knives, forks, and spoons; but the late Master of the Rolls decided that, unless some very special characters were used, a name printed in ordinary type could not come within the section.

155. (*Mr. Mundella.*) And would not be registered as a trade mark?—No.

156. But at the same time any imitation of that name by any other person than the maker of that particular machine would subject the party to damages, would not it?—That is a point I was coming to. It is proposed under the Merchandise Marks Bill to restrict the prosecution to registered marks only.

157. (*Chairman.*) So far as regards marks it is confined to trade marks; but then there is an entirely independent class on the sections, under which you may bring the case, where it is a false description as to the place of origin, or the person by whom it is manufactured, or as to its length or quality, anything in fact which is a falsehood?—Yes.

158. Is there any other point?—Of course I have to refuse a number of marks in consequence of the recent decisions of the court, and I do not know whether the Committee would think that the definition should be extended.

Mr. H. R. Lack.

19 March 1887.

159. You mean with regard to fancy words?—With regard to fancy words and devices, whether I should continue to control the marks, or whether the applicant should be allowed to put them in, and oppositions be entered.

160. (*Lord Macnaghten.*) Had you in your own mind any guide or any definition of what a fancy word meant?—No, I take it, Abbotsford, which is not the name of any town or place, or Saltaire, a word which is not required to be used by everybody, seems to be a perfectly useful mark. Whether legally it is a fanciful mark I cannot tell you.

161. (*Chairman.*) That might indicate that that was the place of origin?—Yes, if it were the name of a town. But take "Abbotsford," the name of a property, and Saltaire, that is Sir Titus Salt's own property. I should say those marks which are not wanted by anybody else, are quite good enough for the trade, nobody would ever forget the Abbotsford stove if he once bought it. They are common words, but they are quite good enough for the trade. That is the difficulty.

162. (*Mr. Hutton.*) In 1885 the Board of Trade instructed the Comptroller to exclude all words, letters, and figures, whether English or foreign, together with names of places or persons?—Yes, in classes 23, 24, and 25, but unfortunately the Board of Trade are not superior to the Act, and I have been obliged to accept fancy words.

163. Those instructions are withdrawn?—I have not been able to carry them out. In the face of the Act of Parliament I cannot obey the Board of Trade instructions.

164. (*Lord Macnaghten.*) Is this the first Act in which the word "fancy" occurs?—Yes. It was not in the first Act.

165. (*Mr. Hutton.*) Would you call say "C 79" a fancy word?—No, certainly not.

166. That is registered?—That is because any letter, letters, figure, figures, as old marks may be registered. The Act says here "provided that any special and distinctive word or words, letter, figure or combination of letters or figures or of letters and figures used as a trade mark before the 13th August 1875 may be registered as a trade mark." For instance a single letter, a Wolverhampton mark, I forget whether it is a "W" or an "M," is worth many thousand pounds a year. It is a most valuable property.

167. (*Chairman.*) These must be proved to have been used as a trade mark before August 1875?—Yes.

168. (*Mr. Hutton*) They are not registered now?—Not as new marks.

169. No numbers or letters?—No, they can only be registered as additions to a distinctive device or to one of the essentials prescribed in section 64. In sub-section 2, after stating what are the essential particulars, it says: "There may be added to any one "or more of these particulars any letters, words, "or figures, or combination of letters, words, or "figures, or any of them." At present I decide these cases without hearing both sides; I merely hear the applicant and decide. In patents of course there is a different procedure. All patents are accepted. Then notice is given. They can be opposed for two months, and the parties opposing come before me. I hear both sides, and decide subject to appeal to the Law Officers, as your Lordship knows; but in the case of trade marks I have these long lists twice a week (*handing same to the Committee*) and decide them, hearing one side.

170. These are words sent in for registration?—Those are the cases. You have not the marks there. I should like to put that in. That shows the course of a mark through the office. At present that gives a great deal of work (*handing in a paper*).

171. I want to ask you whether since the working of the Act of 1875 until 1883 there has been general dissatisfaction expressed in Manchester, or whether it only applies to since the Act of 1883?—No, there always has been dissatisfaction at Manchester.

172. Prior to the Act of 1883?—Yes. There is a note here from Mr. Browning of the Chamber of Commerce, dated 26th February 1876, "after a consideration "of the whole subject it was finally determined to draw "up a memorial in favour of the exclusion of textile "manufacture from the operation of the Act." That was the first thing we started with. A large deputation came up to see Lord Cairns, and told his Lordship that they had millions of marks in Manchester; and they wanted to know if the Government were going to fine Manchester so many millions of money. The cost was 2*l.* for registering each mark. The result of that was that Lord Cairns sent me down to Manchester, and I put myself in communication with the Chamber of Commerce and people I knew there, and it ended in a committee of experts being appointed. On condition that the Government gave Manchester a local office, they undertook to form gratuitously a committee of experts to examine the marks, which were used in the cotton trade at the date of the passing of the Act; and that they did and divided them into two lists, A. which they considered private marks which were registrable, B. which were considered common property and not registrable, except upon the leave of the court. But under all the circumstances Manchester has never been content.

173. I would ask whether the decision of the commercial experts from 1876 to 1879 did not give general satisfaction?—I think it did to a great extent, but I do not think the trade were ever perfectly satisfied. They do not wish for registration at all, I have passed many weeks in Manchester, and the whole of this work has taken place under my direction.

174. (*Chairman.*) Has a great deal of that taken place between 1876 and 1883?—This correspondence is all between 1876 and the winding up in 1879. That is a complete history of the Manchester question.

175. (*Mr. Hutton.*) Prior to the Act of 1883 there was a Board of Trade staff in Manchester?—There is now and there has always been since 1876. Mr. Fry was brought up at one time to London under the new Act, because we thought we could carry on the examination more efficiently in London, but on the representation of Manchester he was sent back.

176. Prior to the Act of 1883 all the applications for registration of trade marks were sent to Manchester?—No, they were sent to London. That is the one difficulty with Manchester. The marks have to go backwards and forwards, because Mr. Fry is not able to decide upon the marks. I have to decide, therefore the marks must come to me, whether they come from London to Mr. Fry and back, or whether they are sent to Manchester in the first instance is merely a question of a few hours saving in post.

177. (*Chairman.*) Prior to 1883 did they come to you?—Yes.

178. (*Mr. Hutton.*) Were all these marks examined by the experts?—Yes.

179. It was done entirely at Manchester?—Entirely. The marks used before the passing of the Act were sent in to Manchester.

180. Is it not a fact that that committee of experts passed something like 40,000 trade marks and of those 40,000 only 170 were appealed against and the decision of the experts committee reversed?—Yes, as far as I know.

181. So that you may say that their decisions gave general satisfaction to the trade?—Yes, I suppose so.

182. I am speaking more of the general trade?—Yes, there were about 44,000 marks placed in the second class list by the committee. After that a hundred or so were taken out by order of the court.

183. (*Lord Macnaghten.*) How many were in the first list?—Only a few thousand, perhaps 4,000 or 5,000. The number of cotton marks in the first class was very small. I have only registered for cotton piece goods 5,165 marks.

184. (*Chairman.*) That is what the committee put in the first class?—No. Those they put in the first

class and those that have been applied for since, about 5,000 marks now for piece goods.

185. (*Lord Macnaghton.*) Can you divide that number, how many were passed by the committee?—I can only go back to 1862, but probably not more than three thousand marks passed as first class, under 4,000 probably.

186. (*Mr. Hutton.*) I see the record states here that out of about 45,000 decisions given by the committee of experts in the course of two years 170 were appealed against and reversed by the courts in London?—That refers to the B. list or open marks.

187. (*Chairman.*) That is to say, people complained of their marks which ought to have been in the protected list, in the A. list, were put in the B. list?—Yes, the court let them out on various grounds, sometimes that the mark might have a common element in it, but it had other private elements; and on their entering a disclaimer of the exclusive use of the common element, the court allowed the old mark to be put in the A. list, or rather, ordered me to register it. As regards the B. list, we have whole volumes of lions, tigers, and elephants.

188. Those are not protected?—Those are not protected.

189. (*Mr. Hutton.*) Prior to the Act of 1883, is it not the case that all the formalities of the application were gone through in Manchester?—There is no change now. An application comes in, and two copies are sent down to Mr. Fry, who is my representative in Manchester. He looks out marks, which he notes, he has a list of marks, and he then tells me what marks he thinks ought to stop it, or are in the way; and then I have finally to decide whether those marks should stop it or not.

190. (*Chairman.*) If he says that there are no conflicting marks, then it is passed at once on his statement?—Yes, certainly; but I think the Manchester people rather wish Mr. Fry to decide instead of myself, and for me merely to register. They have not gone to that extent in words, but from what I gather they want it to be treated in that way.

191. (*Mr. Hutton.*) The Manchester people, I gather, want the whole of the formalities gone through in Manchester, prior to final registration?—Then I am merely to register the decision of the Manchester Office.

192. The final decision to be given by the Comptroller in London?—That is just what takes place now.

193. (*Chairman.*) Of course it would be hardly possible to deal with the matter entirely in Manchester, because there might be some registration from some other place?—Mr. Fry has copies of all those applications. He is furnished with a complete set of representations. The only difficulty that exists at present is that I do not take the same lines as the cotton trade. If we were happily on the same lines, there would not be any difficulty.

194. (*Lord Macnaghten.*) Is Mr. Fry supposed to be more in sympathy with them?—Mr. Fry would be more with the trade, I have no doubt.

195. (*Mr. Hutton.*) Mr. Fry has had experience of the interests of the trade; he has been abroad in India?—Yes; he is a very able man.

196. I suppose you have not had the experience of the local use abroad of trade marks?—No; I have been in the Government service all my life.

197. (*Lord Macnaghten.*) Are these applications from Manchester brought before you at certain intervals, or are they dropping in continually?—I, or the registrar, examine about five marks a day. We have them there two days or so, it depends. We have a room at the Patent Office. The marks are picked out, and the comparison is made. They are only kept a day or two.

198. (*Mr. Hutton.*) What are the instructions which guide the Board of Trade here in deciding to accept or refuse applications. Are there any instructions?—There are no instructions. I have to follow, as far as I can, the decisions of the court.

199. (*Lord Macnaghten.*) The Act as interpreted by decisions?—The Act as interpreted by decisions, and by my own opinion or judgment; I have had considerable experience.

200. (*Mr. Hutton.*) I believe the Manchester Chamber of Commerce has asked several times what are those decisions which have guided the Comptroller in accepting certain applications?—The instructions I have received from the Board of Trade chiefly related to word marks; when the addition of a fancy word was made to the definition, I took the instructions of the Board of Trade as to what lines I was to go upon, and they thought I ought, as far as I possibly could, to meet the wishes of the trade. I began, therefore, on rather liberal lines, we went on for a year and a half or so, and I found that people were content to ask for anything, to take anything that I would accept; and then I consulted the Law Officers, and the Law Officers gave a decision that we ought not to be so liberal, and the courts also have ruled in the same way. They do not say whether it is right or wrong, but it is as the Act stands.

201. My question applied more to the designs of the stamps on cotton goods than to the words. What guides your decision as regards the designs?—I go on my own responsibility unless there is an appeal to the Board of Trade. Under the Act there have been appeals to the Board of Trade, and they over-rule me, or otherwise, and to the courts.

202. (*Chairman.*) It rather strikes me this is the real difference between you; you feel bound to register unless you come to the conclusion that there is a near resemblance?—Yes.

203. And the Manchester view is that, although there may not be strictly speaking a near resemblance, that is to say, many very characteristic differences may be pointed out, yet nevertheless the new mark may be calculated to deceive?—Yes, I quite understand the Manchester view, and I could carry it out to their entire satisfaction; but then the Manchester people are not the only people interested, that is to say, the owners of marks, because there is a very large number of applicants for new marks, and if I am very restrictive they say: "I cannot get anything at "all. You shut the door to me." Then they go to the Board of Trade, or to the court, and the Board of Trade would certainly over-ride my decision in that case. I give you the case of a single horseman, an Indian soldier on horseback, I should not consider that that would stop an EnglishHussar; but the Manchester Chamber of Commerce would.

204. You would say that one does not nearly resemble the other?—No.

205. Still you can understand that, having regard to the custom of the trade, an English soldier on horseback or an Indian soldier on horseback, might be calculated to deceive, because it would be called "the man on horseback design"?—Yes, it might.

206. (*Mr. Hutton.*) Is not there a case before the Board of Trade, of a mark registered by Sir Jacob Behrens, of a man in a tree, and a firm in Manchester having registered a mark with two men in a tree, and refusing to withdraw it, the two firms are now going to law about it?—I do not recollect that. If it has been applied for, and accepted, it is put on the table for advertisement. All marks that are accepted by me are put on the table in the Manchester Office for public advertisement. We advertise them there for the convenience of the cotton trade, and anybody who chooses to go up into this office can see them, and see what has been applied for. But then the Manchester people object to be put to the trouble and expense of opposing marks. They think the Comptroller ought to do that for them.

207. (*Mr. Mundella.*) To take the illustration of the two soldiers on horseback, one being an Indian soldier with a turban, and the other an English Hussar, do not you think it is desirable to keep the parties as far as possible from any resemblance to each other. Is not there sufficient scope without their going so close?—Well, there is not sufficient scope in class

Mr. H. R. Lack.

19 March 1887.

24. It is very limited indeed at the present time, if you take into account all these thousands of emblems which have been appropriated.

208. (*Lord Macnaghten.*) Suppose a man had a tree for a mark, is the rest of the world never to have another tree?—That is what Manchester would say.

209. Of any sort?—Yes.

210. Down, even, to a gooseberry bush?—It might be made to look a large bush; and therefore they would say he must not have it.

211. (*Chairman.*) Take those three (*handing three trade marks to the witness*), there the point of those marks would appear to be, an animal of some kind on a bicycle; but the animal is changed; in the one case there are two instead of one, and another bicycle following. All those three marks have been registered?—Yes, no doubt the people have considered that the bicycle is a new object, and they try to get it, and they each get it by putting different objects on it.

212. Cannot it be well imagined that one of those being registered first and getting a name the others would be well calculated to deceive, whether it is a cat or a frog on a bicycle, the idea would be there is an animal on a bicycle?—Yes.

213. (*Mr. Mundella.*) What are the respective dates of those three registrations?—The first was two frogs on bicycles. It was called the frog and bicycle trade mark. That was applied for on the 18th of June 1884. The next is a monkey and a man and a dog. That was applied for on the 4th of February 1885. And the two cats on a bicycle was applied for on the 10th of April 1886.

214. About a year apart each?—Yes.

215. (*Mr. Hutton.*) Have either of the earlier firms made any remonstrance?—No. The first application is by Lyon Lord; the next one is Thompson.

216. They do not oppose it?—No.

217. Perhaps they are not aware of it?—I cannot tell you whether we required the consent. In many of those cases where I think there is any doubt I require the consent of the registered owner. We have a printed form which we use very freely in those cases.

218. Is not that marked on the subsequent application?—It would be on the papers, not on the representations.

219. (*Chairman.*) You would have a record in the office?—On the shell. We file the reply.

220. Perhaps you will be good enough to look, in the bicycle case, at the papers, and see whether there was any consent, and what the circumstances were?—I will. We have a form which contains a printed sheet for reply, and we file the reply with the papers, consent or otherwise.

221. (*Mr. Hutton.*) I suppose you are aware that Lyon Lord is a very large shipping firm to India, and that if they had orders from India for so many thousand pieces of the goods with the trade mark of a bicycle on, the next firm who shipped out those bicycles might sell their cloth prior to Lyons. The subsequent registered mark might pass for the other one?—Of course that is a point. I am not able to put myself in the position of a Hindoo, or a Japanese, or a Chinese, I cannot transform myself. I know that is the Manchester view. On the other hand merchants have told me that the natives in the East are so very acute that they would never mistake those marks. We know what cleverness the Chinese have in copying with minuteness, and the Japanese too. I do not know whether the Hindoos have, perhaps they have not.

222. The man in Calcutta, and Bombay understands perfectly well, but it is the man in the interior?—I am not aware as to that.

223. The negro in the centre of Africa would simply ask you to send him so many pieces of cloth with that bicycle on?—I can support you in this way. I am not able to distinguish readily between a Japanese representation of a cat and a dog, or a bear. Their animals to me look very much alike, and therefore if you turn the table the other way it is possible to a Japanese a frog and a cat on a bicycle may be nearly the same. That is one of the great difficulties imposed on me by the Act, and the question is whether it would be more desirable to let people file their applications, and have them open to opposition in the same way that patents are.

224. (*Mr. Mundella.*) You duty is that of a good coachman, not to go as near as possible to danger, but to keep as far off it as possible?—Yes. Then I must also tell you, I am not responsible for all these accepted marks. The registrar has the management of the cotton marks in the first instance. I do not deal with all those marks.

225. It would really seem as though everything was done that could possibly be done for Manchester. In the first instance when an application is made it is made through a Manchester agent?—It is made through me, but I have the expert assistance of Mr. Fry, to point out to me what marks he thinks interfere with it.

226. Then they are advertised in Manchester?—Then they come to me and I decide whether I will refuse the mark in consequence of the marks which he has referred me to. If I decide not to refuse it, it goes to Manchester. You will find these are on the table in the Manchester office.

227. And are advertised?—Yes.

228. (*Mr. Hutton.*) They are not advertised. They are put on a table in the Trade Marks Office?—Yes; and if there is no opposition they are registered.

229. (*Chairman.*) Why is it we saw in the Journal that is published there was a copy of some of the things, but there did not seem to be a copy of these trade marks?—That was a concession to Manchester. The Journal was originally made large enough to take in the Manchester marks, which are called face plates; the largest of them go the whole length of the page. I planned the Journal with the object of getting five of those on a page, allowing 2 inches deep by 10 inches across. The Manchester Trade represented to the Government that it would be a very great tax upon them to cut blocks to furnish representations of their marks, and the Commissioners of Patents let them off, and in lieu of that prescribed that the advertisement should be by putting the actual thing itself on the table in Manchester. Inasmuch as all the cotton trade have representatives at Manchester it was considered that that was a sufficient advertisement.

230. (*Mr. Hutton.*) Is it not a mere chance that any house knows whether its trade mark is going to be pirated?—It could not without we send a notice.

231. No notice is sent?—No.

232. They have to find it out for themselves?—Yes, of course, if I think there is a resemblance I send a notice asking whether there is any objection. Supposing I did not think there was any resemblance between two marks I should accept, that being the first I should accept it, and send it to Manchester, and it would be on the table of the Manchester office for the prescribed period, and if no opposition were entered it would be registered.

233. (*Earl of Crawford.*) They would not both be on the table?—No, we do not put the marks with which the comparison has been made.

234. (*Mr. Hutton.*) Is it not the case that the Manchester official often gives notice of certain resembling marks, and still they are passed without any notice going to the registered owner?—Yes, Mr. Fry sends me marks which are in the way, from the Manchester point of view, and as I said before, I am sorry to say that we do not go on the same lines as the trade, owing to the decisions which we have had. My firm belief is now that the courts would not support the Manchester view.

235. (*Chairman.*) It strikes me that there would be great difficulty in supporting the Manchester view on the mere words of the section without something more being proved on a mere comparison of the designs. The essence of the Manchester view seems to be the effect which would be produced owing to

customs of trade, and the mode in which things are ordered?—Customs of trade out of this country. I am really only the registrar for the English market, I am not the registrar for Foreign markets; but inasmuch as the cotton trade are unable to get protection in the East for their markets they get it here.

236. (*Mr. Mundella.*) When you speak of the Manchester view you speak, I suppose, of the view of the Manchester Chamber of Commerce?—Of the trade generally, I think.

237. Is not there a good deal of difference of opinion amongst the trade itself on this question in Manchester?—I only know of one manufacturer who takes a different view to the Chamber, there may be others, no doubt there are.

238. Who is that?—Mr. Hoyle.

239. He takes a different view?—Yes.

240. Is that Mr. Hoyle of the House?—Yes, I have no doubt that there are others, but as far as I am aware there has been no public expression of their views.

241. Mr. Hoyle sustains your own view?—Yes, a more liberal view.

242. (*Lord Macnaghten.*) Is the view of the Manchester Chamber of Commerce expressed anywhere in language?—It has been expressed very frequently.

243. Can you give it us shortly?—No.

244. I do not quite understand what it is. I understand what Lord Herschell says perfectly, but it seems to me to go beyond that. It seems to me to go to this extent, that if any trade mark has a leading feature in it, that leading feature is not to be adopted by anybody else, with accessories, however much to our eye they might distinguish it, if that leading feature would give a name to the mark. For instance the leading thing *there* is a bicycle, and I suppose they would go so far as to say nobody else should have a bicycle, that is an extreme view?—The cases have been very fully set forth by Mr. Bailey, of Messrs. Ralli's of Manchester.

245. (*Mr. Hutton.*) Mr. Bailey will be called as a witness, so perhaps he will state his own case. I gather that the views which you express now as of the trade are those expressed by Mr. Fry?—Yes.

246. When you say "the trade" Mr. Fry sends up those marks which he considers will clash with the new application?—Yes.

247. (*Lord Macnaghten.*) Does he send up the marks simply or does he make a report?—He refers to the numbers and we have the corresponding numbers in London. We have four copies of each mark sent in.

248. (*Mr. Hutton.*) He does that without applying to the merchant?—Yes. We have talked this matter over and over again, and I should be only too thankful and happy if I could do what the Manchester Chamber of Commerce wish me to do. Mr. Fry knows my views, and I know Mr. Fry's views, and we know the trade views. We are perfectly prepared to do anything and everything that the Manchester Chamber of Commerce want, short of being able to decide on the same lines; that is the only point of difference.

249. The object, I suppose, of this Act and of the Board of Trade is what will meet the general views of the cotton trade?—Of all trades.

250. The cotton trade of Manchester absorbs over 50 per cent of the whole marks of the country. Is not that the case?—Not the registered marks. They always take into account those 44,000 marks which are common property. There are the statistics. (*Handing same to the Committee.*) That is my annual report.

251. (*Mr. Mundella.*) If you take a great firm like Rodger's of Sheffield, they have one trade mark for everything they produce, but a Manchester mercantile house has hundreds of trade marks?—Yes.

252. (*Mr. Hutton.*) Would the office not be better worked in Manchester by having the whole investigation and the whole preliminary inquiries conducted in Manchester, having competent officials down there who understand it?—I do not know who you could get more competent than Mr. Fry, if you let him decide.

253. I would not make any personal remarks, but with a competent staff in Manchester of three or four?—There is no difficulty at all with regard to the working of the office. Mr. Fry, I take it, is the best man we could get. He has a staff sufficient to pass the marks in a few days. It is merely changing the decision. If he could decide probably the Manchester people would be more satisfied, if you could make him comptroller for cotton marks.

254. It comes really to this, what is wanted is a man who is practically acquainted with the usages of the trade?—Of course the Comptroller has to decide for all trades, the whole of the trades of the country.

255. Glasgow has expressed its willingness to have it all investigated in Manchester; and I think that was the view of the Bradford Chamber?—It was the view of them all, I think. There are a few East Indian merchants in London, who take out a good many marks in the year, but I do not know whether they have offices in Manchester.

256. Their goods are stamped in Manchester through Manchester agents?—I should think so.

257. So that they practically would consent to that?—No doubt.

258. (*Earl of Crawford.*) Practically that means that Manchester is to over-ride the Act?—As the Act stands.

259. Mr. Fry's recommendations would go the opposite way to yours?—Yes, which leads to the question as to the possibility of providing special legislation for marks used in the cotton trade.

260. If the cotton trade ask for it why should not the iron trade?—Do you think Manchester would object to the Comptroller giving up all control, and merely allowing the marks to be deposited and opposed, and the case heard on an opposed mark, both sides being present, in the same way that we deal with patents now.

261. (*Mr. Hutton.*) The Manchester people want those cases to be heard in Manchester?—Yes.

262. (*Chairman.*) Do you suggest that you should register anything in the first instance?—Yes.

263. Subject to opposition within a certain time?—Subject to a provision which is inserted in most Acts abroad: that no property can be required by the registration of marks which are descriptive, or of common use in a trade, or contrary to morality, or things of that sort.

264. (*Earl of Crawford.*) That would involve publishing each mark I assume?—Yes.

265. They object to that?—It might be sufficient to publish the marks in Manchester, as we do now. It is the centre of the cotton trade.

266. (*Mr. Hutton.*) Do you keep a return of the number of applications made for registration of cotton marks in each year?—Yes, in that report there are three years given.

267. Do you give the numbers registered?—The numbers advertised and registered.

268. And the numbers passed by the Registrar and withdrawn afterwards?—No, we only publish the number advertised and the number registered.

269. There is no register kept of the marks refused, is there?—No, a refused mark has no existence under the Act; it has no protection at all.

270. (*Chairman.*) You keep the marks?—We do really for our own private use.

271. (*Mr. Hutton.*) Has the office in Manchester any copy?—No, I do not think they have. They have some. We have promised to make up that list for them.

272. So that they have something to guide them?—Yes.

273. The mark is kept here so as to guide the Comptroller?—Yes. Strictly speaking I have no right to look at it. A mark refused under the Act of 1875 was entitled to a certificate of refusal, and that

Mr. H. R. Lack.

19 March 1887.

was sufficient to enable the owner to take it into court; but the owner of a refused mark at the present time has no right to go into court at all, except under the Merchandise Marks Act.

274. This is the number advertised; that means put on the table, I suppose?—Yes.

275. Have you the number of applications as well?—Yes, in the Office. But not under each class. In the next table you see the number of applications each year.

276. It is one of the grievances in Manchester that if any objection is made to a new mark being placed on the table they have to come up to London to state it, and the loss of time is very serious to a merchant?—Yes, and it is an expense too.

277. Many abandon it at once?—Yes.

The witness withdrew.

Adjourned to Wednesday next at 12 o'clock.

Committee Room No. 17, House of Commons.

Wednesday, March 23rd, 1887.

PRESENT:

LORD HERSCHELL.
THE EARL OF CRAWFORD.
LORD MACNAGHTEN.
BARON HENRY DE WORMS, M.P.
JAMES HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. C. Bailey.

23 March 1887

Mr. CHARLES BAILEY called in and examined.

278. (*Chairman.*) You are a member of the Manchester Chamber of Commerce?—My firm is a member of the Manchester Chamber of Commerce.

279. You have yourself given considerable attention, I believe, to the question of trade marks, more especially as affecting Manchester?—I am a member of the Trade Marks Committee of the Chamber of Commerce, and for 30 years I have continuously studied the question of trade marks for my firm.

280. I believe your firm is Messrs. Ralli?—I am employed by the Manchester house of Ralli Brothers, of London, Calcutta, Bombay, Kurrachee, New York, and elsewhere.

281. There are several particulars in which the Manchester Chamber of Commerce, and yourself as one of that body, have considered the working of the Trade Marks Acts unsatisfactory?—The whole of the Trade Marks Acts have been unsatisfactory to Manchester.

282. Will you tell us in what respects the present Act is unsatisfactory?—I have grouped a reply under six headings. First, ignorance of the usage and course of the Manchester trade on the part of the London office. Secondly, the passing by the London office of marks which are calculated to deceive by reason of their great resemblance to mark's already registered. Thirdly, the great variability of the decisions of the office in London, so that the Manchester trade is greatly perplexed as to the rules which guide the Board of Trade in administering the Act. Fourthly, the tendency of the practice of the London office to promote litigation. Fifthly, the persistency with which the preliminaries of registration are retained in the hands of the London office in spite of the specific instructions of the Duke of Richmond to the contrary, as contained in a letter to the Manchester Chamber of Commerce, dated 1st August 1885. And lastly, the change of practice of the London office as regards new applications, by which the rights of old owners are not now considered, as was formerly the case when the onus of proof rested upon the new applicant.

283. It will be desirable to take these in order. The first is, the ignorance of the usage and course of the Manchester trade on the part of the London office?—Yes.

284. Will you tell the Committee what you have to say under that head?—Manchester has spent a great deal of trouble in educating the Board of Trade as to what a trade mark is, as applied to the Manchester trade. I should like an opportunity of explaining what we require as a trade mark in Manchester, as opposed to what is the current opinion of it in other trades. The London office has registered headings and selvedges which is quite opposed to the usages of the Manchester trade. They have created a sub-class in class 24, which the Manchester trade does not recognise—the sub-class of velveteens. The London office is very largely ignorant of the trade usages of Manchester, and very rarely asks for any information from Manchester to put them on the right track in dealing with applications.

285. Will you explain what are the trade usages of which they are ignorant which affect the question of trade marks?—That is rather a wide subject. Perhaps I might explain what we regard as a trade mark. With that view I have brought this (*producing specimen*). The first difficulty as regards the Manchester marks is that they are not the trade marks of the producer, but they are the trade marks of the merchant who ships the goods. Fully three-fourths of the shipments of Manchester goods will be made by the merchant, not by the manufacturer of the goods. Consequently the merchant is obliged to use a very much larger number of trade marks than the manufacturer would.

286. Why?—He has a great many buyers to supply. There may be buyers in the same market who would not like the same goods to be brought in competition with the same stamp.

287. (*Baron Henry de Worms.*) Would a merchant put the same trade mark upon the same quality of goods, or would he change. In the case of a manufacturer a trade mark is applied to a specific quality defining that quality. Is that the case with a merchant?—This is an actual piece which is now being shipped to Kurrachee, one of the Indian markets. The name of the firm is clearly put on. There is also a quality number which varies. The quality numbers are infinite, so infinite that it was impossible for the Manchester merchants to register any of them.

288. The point I was on was this: supposing you

were to supply the same quality we will say to America, would you put on that the same mark, or do I understand that you might supply the same quality of goods with a different mark, according to the place to which you sent it?—The probability is that it would have a different mark.

289. (*Chairman.*) As I understand, the mark has to do in your trade with the particular buyer you supply?—It does, in several ways. The mark that is in the centre of this cloth is a mark which identifies my firm with the shipment of these goods. We put it on a great many qualities of goods, not only on firm thick shirtings like this, but on very flimsy open cloths.

290. Then, as I understand, the mark you put on is a mark not intended to indicate your goods, but is a mark intended be used by the buyer from you, so that half a dozen buyers from you of the same goods have half a dozen different marks?—The mark is intended to indicate our goods. It is of no value to us unless it does indicate our goods. Our name is always given with it.

291. If it is intended to indicate your goods. why are there six different marks given to six different buyers?—For the simple reaaon that if all these buyers were trading in the same market there would be a competition amongst them for identical cloths, whereas by putting one mark upon one cloth, and another mark upon the same quality of cloth, those buyers do not clash with each other.

292. That is to say, it is not really a mark to protect you so much as a mark to serve the purposes of the different buyers from you?—It protects the shipper, because no one else can ship the same goods in the same market, and it is not always the case that the mark is put on by the buyer.

293. (*Baron de Worms.*) You may put the same mark on different goods?—We do very largely.

294. It does not indicate the quality of particular goods, but indicates that they come from you?—That is the primary object of the mark.

295. (*Chairman.*) Well, no, it does not indicate that they come from you, but that they are supplied by you to a particular buyer?—Not at all. The mark is always identified with the name of the firm. The name of the firm is often put in three, four, or five languages, in order to make it clear to the consumer that the consumer is buying Ralli's goods.

296. But then the name indicates that it is Ralli's goods. The mark is intended to be for the purposes of the different people who buy Ralli's goods, in order that each buyer from you may have his own mark on your goods?—But the consumer of the cloth is unable, in the large majority of instances, to read in his own language the name of the firm. What he does understand is the trade mark which is put on. If he likes the cloth he does not order the quality number or the name of the firm so much as the particular thing that is impressed on his mind, namely, the mark by which he has identified the cloth.

297. It only comes to this, that you, carrying on your business in that way to suit the views of your buyers, want to register several marks for the same quality of goods instead of only one?—As a matter of fact, we use thousands of such marks.

298. (*Mr. Hutton.*) If your customer wants to buy that cloth he orders the cloth with the stamp of the wrestlers?—Yes.

299. (*Chairman.*) It comes to this, that you use or want to use for the same quality of goods a number of different trade marks because it better suits your business, and the business of your buyers, that each of them should have a different mark on the goods that you supply to them, though in each case indicative that they are your goods?—In very many instances that would be the case.

300. In what way does that alter the condition of things? I understand that owing to this practice you may want to register a great many more marks than a person in a different trade, but I do not quite understand how that usage affects the registration or the question of registration?—It multiplies the number of clashing marks very largely. That is the obvious result.

301. That is to say, the more marks there are registered, the more chance there is that they may clash with something else. But it does not go beyond that, does it?—Well yes, it goes very much beyond that. If a firm is to be limited to a single mark it could not do the business that it otherwise would.

302. There is nothing that is limited to a single mark?—Not by any means; we could not have done with a single mark. Mr. Disraeli, in his Act a good many years ago, proposed to limit the number of marks to two or three.

303. We are dealing now with the point that you are affected prejudicially by the ignorance of the usages and course of the Manchester trade on the part of the London office. As I understand, the usage only amounts to this, that you, for the same class and quality of goods, seek to register, and do register, several marks or many marks instead of one?—It is so.

304. You do not mean to suggest, do you, that that is unknown in the London office?—The point that I would at this stage mention is, that the mark is not always impressed in *this* form. We have the mark in many forms and in many sizes. Every piece is not *this* size. Some of the pieces will not be more than 12 by 12. We therefore have to reduce the size very largely, and leave out a great many of the shaded lines in the stamp, in order to make it legible. In addition to that they go as chromo-lithograph labels, in which the border counts for nothing in point of usage. The essential thing is the object which is surrounded by the border, and this goes in many sizes and in many colours.

305. I quite understand that, but what I do not quite understand is your first point, that mischief arises from ignorance on the part of the London office of the usage and course of trade. Do you suggest that they do not know at the London office that the same Manchester house does register a number of trade marks for the same class of goods?—In speaking of the ignorance of the London office I refer more particularly to such an instance as the registration of a heading. The heading of a piece is the coloured edge which is put at the end of the cloth to show that it has not been fented, as well as for ornament. These are all lined headings, which are very largely used in the Manchester trade. There are thousands—scores of thousands of them.

306. Do you mean that you object to those being registered as trade marks?—The whole of the Manchester trade is against the registration of these lined headings.

307. (*Mr. Hutton.*) They are not registered now?—They are not registered now. The Board of Trade has admitted they ought not to register a heading.

308. (*Chairman.*) So that that mistake has been rectified?—It is now.

309. Is there anything else in the usage and course of the Manchester trade, beyond what you have told us, in which it differs from other trades; beyond the registering of a number of trade marks on the same quality and class of goods because you want to identify them for different purchasers?—There will be this difference also, that we could not put upon a flimsy cloth like this the same character of stamping that we could upon a label. A very open cloth requires a very open mark, and we have to reduce the mark to the fewest possible lines.

310. By that you mean that this different texture of cloth necessitates further additions to the trade marks you have to register?—That is so. A stamp of *that* character could not be put upon *that* cloth as an impressed stamp.

311. It all comes to this, that your trade necessitates the registration of a great number of marks for the same class and quality of goods?—It is so.

312. (*Earl of Crawford.*) Am I right in understanding (I think I am wrong) that you have put the

Mr. C. Bailey.

23 March 1887.

wrestler mark on *this* quality?—We should put this stamp on that cloth because it is sufficiently open for the purpose.

313. But do you in practice?—We do in practice.

314. You put the wrestler on stamped shirting and on this puggaree work?—That is so.

315. Supposing a man wants a piece of cloth of the Wrestler mark, I mean a native, he would not know whether he would get the stamp shirting or the stuff puggarees?—They are used for different parts of clothing. A buyer of *that* quality would not ask for *that*.

316. (*Mr. Hutton.*) Do they both go to the same market with the same stamp?—Yes.

317. (*Chairman.*) I understand what you put as the distinctive usage and course of the Manchester trade, but I do not quite understand still your first point. Do you suggest that that is not known at the London office. They must know there that the house you represent registers many marks and not one?—It appears to us they do not know of the exact usages of the trade and the mode of applying the trade marks.

318. What other usage is there as far as you have gone? I can see none except the practice of using a number of marks instead of one only?—If a mark is sent off to the Trade Marks office in the elaborate colours in which I submitted a mark to your Lordship a few moments ago, and a very similar mark were made as an impressed stamp, the probabilities are that the Manchester office would regard them as totally distinct.

319. That is going to your second point that they pass trade marks which are calculated to deceive. I was confining my question to the first point?—We suggest that it is on account of the Trade Marks office in London not knowing the great differences of application.

320. Perhaps you had better pass to your second head. It would seem from that that the first and second are really one?—That is so. Before doing that I would refer to the creation of a sub-class in class 24, which is not allowed in the Act.

321. (*Baron Henry de Worms.*) Do you register your trade marks?—We have not registered our trade marks for the last four or five years. The one which you hold in your hand is one of a score that we have recently purchased; but for the last four or five years we have not registered any trade marks, although we are using them by the score and by the hundred—as new marks.

322. (*Mr. Hutton.*) Why do not you register them now?—Because we do not think the Trade Marks office sufficiently protects merchants in registering their marks.

323. (*Baron Henry de Worms.*) Before you use a mark that is not registered, I suppose you make some investigation at the Manchester office to see that you are not infringing an existing mark?—Not always.

324. Then I do not quite see how you can complain of the action of the Manchester office if you do not register. If you registered it, I take it you might have an objection raised by the Trade Marks office at Manchester and in London, and your attention called to the fact that the mark which you proposed to register was already in existence. If you do not register you are bound to know or to inquire whether such a mark is in existence, because if you did not you might be subjected to legal penalties for taking a mark which was already in existence?—The courtesies amongst Manchester merchants would probably prevent any such circumstance as that arising, and we consider that the market to which the marks are sent would probably protect us better than would be the case in this country.

325. I take it from that that if you registered a mark which might be very similar to an existing mark, the trade in Manchester would not interfere with your registering such a mark, is that so?—Taken broadly that would be so.

326. (*Chairman.*) You object to the classification. The classification is made by the Board of Trade by means of rules under the powers of the Act. What is the objection which you make to the classification?—That the Board of Trade have created a sub-class in class 24 which is not considered good on the part of the Manchester trade.

327. (*Earl of Crawford.*) What is class 24?—Class 24 consists of cotton piece goods, broadly. The sub-class in class 24 has been created for velveteens, or, rather, for pile goods.

328. (*Chairman.*) When was that created?—We do not know. We only see the names on the table of the public office in Manchester.

329. (*Earl of Crawford.*) Then do you hold that velveteens ought to be taken out of that class and put into another one?—We hold that velveteens and all pile goods are cotton piece goods, and belong to class 24.

330. (*Chairman.*) Are they registered as a separate class? I see class 24 is cotton piece goods of all kinds, such as cotton shirtings and longcloth. I do not understand what you mean by a sub-class?—I do not understand it either, but the fact is that the Trade Marks office has created the sub-class.

331. Do you mean that if a mark was to be registered for cotton shirtings and for velveteens it would require a double registry?—Not quite that. A man may apply for a mark in sub-class 24, velveteens, and he registered for it, notwithstanding that that mark would clash very seriously with a number of other marks in the broad class 24.

332. (*Mr. Hutton.*) Does that apply solely to cotton goods or to mixed cottons?—To cotton goods exclusively.

333. (*Lord Macnaghten.*) When was this sub-class created?—We noticed it about a couple of years ago,—it may be three years ago,—but the trade has protested against it from the beginning.

334. (*Earl of Crawford.*) Would that have arisen shortly after the great stride that velveteen took about that period?—It would be about that time.

335. After Bradford made such a tremendous move in the matter?—Yes. The difficulty about pile goods is this: that it is almost impossible to draw the line between cotton piece goods and pile goods. Now a sateen is practically a piece of pile goods. It is a short pile; but still it is a sateen and is a cotton piece goods. It is exceedingly difficult to draw a distinction between one kind of pile goods and another. For instance, a sateen would be considered by the Trade Marks office as an ordinary cotton piece goods, while a piece of velveteen would be relegated to this sub-class in class 24.

336. Would not that be owing to the very marked difference there was in the appearance and texture of the material?—In Manchester we have no such marked distinction. If you take a piece of grey shirting and a piece of velveteen there is a marked distinction, but the gradations between the two are so numerous that it would be impossible to draw a line.

337. Where the pile would become so marked as to cease to be an ordinary textile fabric?—That is so.

338. (*Mr. Hutton.*) Take a piece of uncut velvet. How would they register the mark on that?—I really could not say what the London office would do. In Manchester we should say it was a piece of cotton piece goods.

339. (*Chairman.*) Now we will pass to the second point—the passing by the Board of Trade of marks which are calculated to deceive by reason of their great resemblance to marks already registered?—That is our great point of contention with the Trade Marks office in London, that the Board of Trade are continually allowing marks to come upon the register which practical men would say are colourable imitations. If you would allow me I would put before you a few of such marks, to show by actual registration and non-registration what we mean by "calculated to deceive."

340. Before you do so let me ask you this: I gather from what I have read that in your view marks may be regarded as, and would be, calculated to deceive, although it may be to some persons difficult to say that they had a near resemblance; because very characteristic differences might be pointed out, and yet, nevertheless, you may say that, owing to the practice of the trade, they would be calculated to deceive?—That is so, exactly. We have always to regard the ultimate consumer. If the ultimate consumer be an ignorant man he cannot draw the minute distinctions that an intelligent cultivated man would draw. Indeed a cultivated man would not always be able to identify marks which are passed as different by the Trade Marks' office, unless that cultivated man had the marks clearly before him, so that he could contrast the differences. Six months afterwards, after he had bought a piece having a certain mark upon it, he could not be quite certain whether a man wore a turban a little bit over the left eye, or whether it was a little bit over the right eye. He could not remember all the minute details of the stamp.

341. What you want is that a trade mark only should be registered which is so distinct that it would not be confounded by a person who knew the first trade mark only by his recollection of it?—What we would say is that it should not be registered if in the eyes of practical men they would regard it as a mark calculated to deceive. There will always be a point in accepting and rejecting trade marks in which it is to be expected that even an expert would hesitate to say whether a mark did or did not imitate one already on the register. We admit that difficulty frankly. It is a difficulty that must occur to the Registrar daily; but we in Manchester contend that the Board of Trade in London draw the line very much finer than we as practical men would draw it.

342. Will you show us now the illustrations you alluded to as indicating what your view is?—If the Trade Marks volumes are here I would refer to 24,391, performing tigers, and 53,419.

343. (*Mr. Hutton.*) A native in India simply sees the distinctive feature of the mark?—We must keep in view always the idea that the ultimate buyer of the goods has of any mark that is given to the piece which he buys, whatever it may be.

344. (*Baron Henry de Worms.*) Do you in Manchester consider, assuming that you had the arms of some person on a piece of goods, that it would be an infringement of a trade mark if a portion of those arms were used for another piece of goods?—A supposititious case is always difficult to answer off hand.

345. The case has arisen?—Quite so. If you could show me the two marks I would form an opinion based on knowledge whether it would be calculated to deceive or not.

346. (*Mr. Hutton.*) A similar feature or device is calculated to deceive?—Undoubtedly, if it is similar.

347. That is the object, I suppose, of houses in trying to register marks which have features similar to those registered?—There would be two directions in which houses might look at a mark. One house, being an honourable house, would do its very best to steer apart from any of the marks of its neighbours because it would want to create a demand for its own mark. But on the other hand, a house that has no high reputation might try to sail as near as it could to a mark already on the register in order that it might profit by the repute in which the original mark is known in the market to which the competing goods are sent.

348. (*Chairman.*) Something would depend upon the market probably?—Of course.

349. I suppose, in your view, you might have two marks, in one of which there was an exact facsimile of something that existed in the other, which was not calculated to deceive; whilst you might have two marks in which there was no one part of the one exactly like the other, which were calculated to deceive?—Quite so. Your Lordship has just put the exact case which would happen again and again. I remember a case in which we used a couple of native drums for a trade mark, and an unprincipled native sent the ticket home and turned them into flower pots; but all the details of the mark were almost the same, only that in the first mark there were two native drums and in the second two flower-pots. I am sorry the marks I have referred to are not here. I should like to see No. 16,814, which represents three rifles.

350. (*Mr. Hutton.*) Has your mark of the wrestlers been infringed upon by any registered mark?—No. The wrestlers is rather a favourite mark in certain parts of India, and it is remarkable that there has not been much imitation of it. There are three rifles, bicycles, dyers, Indian gods, and bullocks.

351. (*Chairman.*) Take the bicycle for example. Would your view be that when one person had registered a design which had a bicycle in it, that nobody else should register a design with a bicycle in it, whatever differences there might be?—Of course a supposititious case is not easy to answer off hand. You must see the two representations; but I would say broadly that, if the prominent object in the second design is the bicycle, and if that would be likely to strike the eye of a consumer, the bicycle would be the name that would be given to the cloth, and then, undoubtedly, the second bicycle ought not to be put upon the register without the consent of the first owner.

352. Would not there be a great difficulty, if you carry it to that full extent, in finding designs at all, where people want to register so many as the Manchester houses do, if you are always excluded from any one thing which has been made a prominent feature of the other. After all you may obtain a great variety of designs by different permutations and combinations, but the number of individual objects that you could take would be exhausted, would it not?—I would answer that question in another form. Supposing that on the bicycle a very large toad were mounted, so that the toad was quite as prominent, if not more prominent, than the bicycle, I should say at once that was a mark capable of registration.

353. Take this, for example, the toad on the bicycle, you would not say that because a man had registered a bicycle alone, another man might not register the bicycle with the toad upon it?—Personally, I would pass that mark as a mark capable of registration, because the frog is a prominent object in it; but the frog might be drawn in such a form as to simulate the man on the other bicycle, and in that case I should reject it unhesitatingly. Following the bicycles, there is a mark accepted by the Registrar, and it is registered, which I should unhesitatingly condemn as an infringement of the right of the owner of a bicycle pure and simple. The bad one is not here. There is a bicycle which you have to look at a considerable time before you can realise the story.

354. Do you know what number that is?—It is 54,034. This is a bicycle which has been refused. (*Producing same.*) That was before the frog was registered.

355. Was there a man on a bicycle before this?—There were several. We ourselves are the owners of a bicycle which we could not register in consequence of there being more than three owners of a bicycle.

356. An animal like this frog on a bicycle would be distinctive, would not it, from a man, whether an Englishman or a Hindoo, on a bicycle?—I should regard that mark as capable of registration; but it might be drawn so that it simulated a man, that is to say, the frog features might be toned down so as to make it a colourable imitation.

357. You would not say that the prior registration of a man on a bicycle prevented your registering this?—In my personal opinion, no. I would pass that as a mark capable of registration. There is a bicycle which is on a tight rope, in which the tight rope is the only novel feature in the mark. It takes several

Mr. C. Bailey.

23 March 1887.

minutes before you realise that there is a bicycle on the tight rope. It is only suggested by the outline of a few trees and clouds. It is very hazy indeed. When such a stamp as that is impressed upon a common piece of flimsy open cloth like this, the rope, which is the distinctive feature in the mark, could not be seen in any distinctive way. That is a fraud upon the owners of bicycles with men upon them where there is not a rope, and that has been accepted by the Trade Marks office as a good mark, and has been registered. Its number is 54,034.

358. (*Baron Henry de Worms.*) You mean that the rope might be confounded with the ground?—It might not be marked upon a coarse cloth like this; it is so slight as that. The representation of the rope is so insignificant a part of the scene that you are a long time before you can realise that it is a bicycle on a rope.

359. (*Mr. Hutton.*) When was this mark of a man on a bicycle refused?—The original men on bicycles would be thrown out by the committee of experts in Manchester.

360. Prior to the Act?—No, after the passing of the Act. When they were classifying all the old marks, there would probably be more than three, and so it would be relegated to the B. list. At that date there were no frogs on bicycles, and, therefore, that was the novelty which was properly registered in my view. I would submit these three dyers' marks as illustrating the point that is in dispute between the Board of Trade and Manchester. The original mark on the register is 33,752. It is represented, of course, in colours. Now colours count for nothing in registration.

361. (*Earl of Crawford.*) Is it represented in colours on the goods?—It is registered as a label in colours. Now neither the border nor the colours are capable of registration. They are, in fact, not registered. It is simply the design itself which is registered. When that comes to be put upon a piece of plain grey cloth, it would be represented in some such form as that (*producing a drawing*). That has been roughly drawn to show what it would look like when put upon a piece of grey cloth. That might have been registered just as well as the coloured representation, as far as the Act is concerned.

362. One of these is the reverse of the other. Do you send them out in that way?—I did not know that it was. It is simply the method of copying. If you hold it up to the light you get the representation exactly like the registered object.

363. (*Chairman.*) Which is the next?—The next is 36,359, which also is registered in colour. It is a different border, and reduced to the same level as the first; where there is nothing but an outline you get, practically, the same scene.

364. You mean that in each case it represents dyeing, and wringing out the things that are being dyed?—It is so.

365. (*Baron Henry de Worms.*) You would contend that the occupation of the figures produced the similarity of which you complained?—Quite so. I would contend this: What is the idea of that stamp to a consumer? He sees, in one, three men dyeing, and in the other, five. He does not remember the number of men or the precise way in which they are disposed. All that he does remember is that it was a dyer's scene. I venture to remark that a cultivated man, six months after having minutely inspected those marks, would not be able to say which was which if he had to fall back upon his memory for remembering them. Then the mark 53,034 is applied for, which again, I submit, is in the same form, only the other two are reversed. They are all reversed, so that if the three are looked at on all-fours you have a fair representation of the three stamps. Now, the contention of the Board of Trade is that 36,359 is capable of registration without reference to 33,752, and that 53,034 is capable of registration without reference to 36,359 or 33,752. The owner of the last stamp, 53,034, when he has the facts put before him, says distinctly, My mark ought not to have been passed for registration. It is the same mark as the other two. He withdraws the mark from the register. He decides against himself. That I submit as a very practical test of the difference between the Trade Marks office in London and the practical men in Manchester.

366. (*Mr. Hutton.*) And the owners are in the same trade, are they not?—They are all three in the same trade. But the last man who has been passed by the Board of Trade office in London, and who could register so far as the Comptroller is concerned, does not know that there are others on the register; but when he has the facts put before him he says, my mark is incapable of registration, and therefore I withdraw it, notwithstanding that the office says it is capable of registration, and we will register it if you like.

367. (*Earl of Crawford.*) That merely proves that he does not want to be in competition with his friends, or he thinks that his friends' mark would already be in competition with the one he has just got?—Does not it prove that the last man says, I do not want to infringe upon the rights of my neighbours, and therefore withdraw it?

368. (*Chairman.*) That may be the explanation, or it may be that he regards them as sufficiently alike to fear that his is not a distinctive mark?—That is so.

369. Either of those views would support your contention?—Were I in the place of the third man my view would be this: I would not send it because I should wish to create a name for my particular stamp, which would be 53,034. I should like it to be known all over the country to which I sent the goods as my stamp; but when I found that there are two others on the register with the same idea I should tear it up.

370. (*Mr. Hutton.*) You consider that is calculated to deceive?—Undoubtedly, and I submit that the fact of the third man saying he ought not to be put on the register is a comment upon the decision of the London office.

371. The London office contend, I think, that it is sufficiently distinguished to make deception impossible?—They say that. By reducing them to a common level, as I have tried to do, in those three representations, I think the Committee will see that the degree of resemblance is probably nearer than the Trade Mark office themselves might believe when they saw them in their coloured state.

372. (*Earl of Crawford.*) With reference to these coloured ones and the others, your design in the wrestlers, in the chromo-lithograph, is different from the one you have impressed here?—Different in which way?

373. There is a marked difference. You can see the whole of the face of one man in the impress?—I think there is a minute difference, I see from here in the legs.

374. There is a good deal of difference in the legs and also this man's face is seen *here;* whereas in this one the faces are turned away?—They have been meant to be drawn for the same thing, but as artists are not always exact in their copying of instructions given to them, there will be variation, but they are meant for the same stamp.

375. Are the goods bought on *that* or on *that*?—Probably on both.

376. Where there is such a marked difference between *that* picture and *that* picture do not you think that would be sufficient to distinguish one from the other?—But the colours are not registered. The man who has either of those two stamps will use them in the form in which I have drawn them.

377. (*Baron Henry de Worms.*) Supposing a buyer were to come to you who had not previously purchased any of these goods, would not he be just as likely to buy if you showed him this coloured one as he would be if you showed him this which is not coloured?—

It would depend a good deal upon the goods that they were used for.

378. Is the custom of the trade to buy on the uncoloured or the coloured representation?—They are used both ways. For example, we sell this madapollam with a drum which is impressed upon the cloth, we frequently put a chromo-lithograph representation of the drum; that is a common occurrence, but not always. It is often sent without the second representation.

379. (*Mr. Hutton.*) Is that registered?—Yes.

380. (*Earl of Crawford.*) Do you have to take out registration for both?—No; I do not know which is registered, whether it is the impressed stamp or the chromo-lithographed label, but whichever is registered the registration of the registered one covers all these forms. For instance, in these wrestlers we have at least a dozen different sizes of stamps.

381. (*Baron Henry de Worms.*) If you in any way vary your mark subsequent to registration in the slightest degree, is not it a fact that registration of that mark is no longer valid?—We should not regard it so in the Manchester trade.

382. Is it not the fact that that is the custom of the office?—It would depend on the amount of variation. The variation in the case of the wrestlers is not a variation that would prejudice the mark.

383. Taking it generally the mark must be as it is registered?—It must.

384. (*Earl of Crawford.*) Would you call *those* colourable imitations the one of the other?—Undoubtedly. In practice the two marks are identical.

385. Supposing *this* got on to another piece of goods without *that*, *this* might be passed off for *that*?—And that is the reason why we should put the lithograph as a stamp to protect the label. It frequently happens that an unprincipled dealer will take the label off (it is never on very fast) which is on a good quality of cloth and will put it on a common quality not of our importation and sell it on such, so that we really do not like labels.

386. (*Chairman.*) What you want really is much more the stamp on the goods than the label?—Yes.

387. (*Baron Henry de Worms.*) You sell really on the stamp of the goods?—On the stamp.

388. (*Chairman.*) Have you any other illustrations to give us?—I should like to have shown the case of the rifles because it illustrates a very large set of instances in which Manchester is against the practice of the Trade Mark office. I can take two other instances while that is being fetched. I will take next the case of the Indian gods (*producing specimen*).

389. Would there be any objection to insisting that the design as sent up for registration should not be sent up in colours at all, because it strikes me that, as you have yourself pointed out, the resemblance is much more striking when you have not a distinction produced by the difference of colour; and inasmuch as the colours are no part of the registration, and you cannot protect them, it would seem the tendency may be rather to mislead?—It would be perfectly satisfactory to Manchester if we were prohibited from sending in designs in colour.

390. Do not you think that might be judicious as leading to the resemblance being seen more readily than if you are comparing coloured with uncoloured, or coloured in a different way?—It would be a very great advantage, particularly in the hands of officers of the Board to whom such questions as colour are not sufficiently known. In the case of those gods the original ticket is 24,284. It is registered in colours. And when it is contrasted with 55,716, the next stamp, there appears to be very considerable dissimilarity, so that it would not surprise me to know that the second stamp had been passed by the office. We should not blame the office very seriously for passing the second stamp in consequence of that difference in representation. But as a matter of fact, the two gods are exactly the same. If each mark be reduced to plain lines in the same way that I have drawn the dyers the distinction between the two stamps would practically disappear. It is the same god; the nose in the shape of a beak, I think a serpent twisted round the body; but in the one case the god has a fuller face than in the other. The other is seen more in profile, but it is the same stamp. 55,716 was passed by the office for registration. The owner of 24,284 knew nothing whatever of it; indeed it is not the practice of the office to let the old owners know anything about the clashing stamps that are exhibited to the public. He saw it on the table and was greatly surprised to find that it had been passed without any reference to him. When the owner of 55,716 is made acquainted with the fact of the existence of 24,284, he says, I ought not to have been registered, or rather I ought not to have been passed for registration, and I withdraw the stamp. There is a man deciding against himself and illustrating the point that I am now putting before your Lordship that the practical man in Manchester, when he decides against himself, may be taken as very good evidence of the laxity of the London office in passing his mark.

391. Are there any other illustrations you would like to give us?—The well will be another good illustration of the same fact.

392. (*Earl of Crawford.*) Before you go on to that may I ask you if you are familiar with the appearance of the Hindoo gods as drawn?—I do not know them. I have not the honour of their acquaintance, but we know them from their frequent representations in tickets. The gods are a very frequent subject of treatment for trade marks.

393. The general appearance of a Hindoo god in a native drawing is extraordinarily alike, to the European eye, to that of the neighbouring god, and yet by the fact of his holding either a lotus in his third arm or a snake in his fifth arm, it would make the whole difference to the native eye, which would immediately recognise the difference between one and the other?—If the particular native were a worshipper of the particular god, but if he were not it would not be so.

394. You think their knowledge would be bounded by their own worship?—I think so, because an ignorant man is not supposed to know very much about mythology. He keeps to what he has been brought up in. We may have a wider knowledge, but not the ignorant Hindoo.

395. (*Chairman.*) I suppose Mahommedans would not know much of the Hindoo gods?—Not at all. They would know nothing. Now I take the wells. 17,905 is on the register. I think that is the one with bullocks.

396. Two bullocks with a rope attached drawing up from a well?—Yes. That is a scene extremely common in Oriental life. The well is the prominent object in native civilization. Wells are very much alike. There is a superstructure over the mouth of the well; there is a rope from the superstructure which is attached to the shafts, in which are a couple of bullocks. It is a common representation of Eastern life. In the country where bullocks are used as animals of labour you get bullocks; in countries where camels are used you get camels; in countries where asses are used you get asses. But whichever the country was, the native would not be impressed so much with the representation of the animal which draws the water as by the well itself. In his eyes that is the prominent idea. Well now, 59,101 is applied for. I think the representation is that of a Turkestan well in the desert.

397. Fifty-nine thousand three hundred and thirty-three, I think that is?—That, perhaps, is in class 23, while I am quoting class 24. It does not matter, it is the same representation. There you have the same scene differently represented. It is drawn on a label. There is a little more space about it than there is in the first; but you have a camel instead of bullocks, and you have stone apparently taking the place of the wood in the first representation. When those two stamps come to be placed upon

Mr. C. Bailey.

23 March 1887.

goods in an impressed form, in the same way that the dyers were represented, the native could not distinguish between what was wood and what was stone; and if he looked at the animals he might have passing through his mind the thought, those English people are very queer draughtsmen, they have put the hump in the wrong place. If he is accustomed to a bullock, if the hump is put a little bit further on so as to make a camel, which is an animal he might not know, he would simply say, These English people do not know how to draw a bullock, or *vice versâ*. It might be that the bullock takes the place of the camel. Now we hold in Manchester that 59,101 ought not to have been put on the register without the consent of 17,905; and when the owner of 59,101 finds that it has been passed by the office in London for registration he withdraws his mark, and says it ought not to be on the register. He decides against himself. And that point again shows the laxity of the London office in originally passing the stamp without getting the consent of 17,905.

398. You say that the central idea on each of them is the well with supports and pulley over it, and a rope and an animal drawing from it?—That is so.

399. And that the difference, that it is two bullocks in the one case, and in the other case a camel, and that there are other changes, does not prevent the same leading idea being conveyed?—That is so. If that were brought down to this level the distinctions would be very much less than they appear in the two representations.

400. (*Lord Macnaghten.*) In fact, if one man had a well, would you not allow another man to use a well with any accessories?—I would not go so far as that. In the case of the bicycle, in my opinion, a frog on a bicycle was a registrable object. I would not go so far as to say that no other representation of a well ought to be registered, but I should like to see the stamp before I pass an opinion that it was incapable of registration.

401. (*Chairman.*) For instance, if you had a well without any rope and pulley and supports, and you had a procession of women with pitchers on their shoulders?—That would be a good stamp.

402. (*Mr. Hutton*) We have had it stated in evidence that if one man is registered, the Manchester people would not be satisfied with another stamp of one man?—I can only say in answer to that question, my own firm has made scores and scores of assents to the registration of practically identical marks for some of our neighbours.

403. That is with consent?—With our consent.

404. I gather from the evidence given to us, that if anyone has a stamp registered simply with one man, Manchester would raise an objection to anybody registering another stamp with one man?—That is a very broad way of stating it. I think I have already stated that in the case of the bicycle I would pass the one with the frog as a distinct mark.

405. (*Chairman.*) I suppose if you had a man lying down asleep you would pass a man dancing a hornpipe?—Undoubtedly. They are as distinct as possible. I should say that if that representation has ever been made of Manchester, it has been made by an enemy of Manchester, who does not want to let Manchester people give their opinions upon this point before you. It would not be workable. If one man is registered, it does not matter what he is; that must surely not cut off all other men from being registered. On the contrary, the trade mark books are full of such variations; for instance, a man with a fiddle is registered; a man with a pitcher is registered; a man with a scythe is registered; and so you may vary the occupations of men indefinitely. Those are all good subjects for representation. Anyone who says that because a single figure has been registered therefore it must cut off all other figures, is not stating the case of Manchester.

406. (*Earl of Crawford.*) In every one of these points the man is the prominent object, in the same way as the well here. The fiddle is the secondary one, and the pitcher is also a secondary one, and yet you object to the prominent object here, being a well, with a secondary object of a bullock and the secondary object of a camel. Why is that?—You say that the fiddle is a secondary object. Is it so? Personally my own practice has always been to register the fiddle pure and simple, without the man. I think it is a better stamp, a more distinct stamp; but I should yet hold that if a man was fiddling, the idea is not so much the man as the fiddling.

407. (*Chairman.*) You might have a man with a fiddle, yet so drawn that you would object to it, perhaps, even as against a man with something else in his hand. But if you had a man fiddling, the main idea would not be the man but the act of fiddling. I understand your suggestion to be here, that the central idea is that they are drawing from a well by means of a pulley attached to cattle, and that that is the idea suggested by this?—I quite accept that.

408. I am putting that as what I understand to be your view?—Yes.

409. (*Baron Henry de Worms.*) Supposing you had a coat of arms as a stamp and the supporters were two lions, would you consider that anybody registering a lion rampant would be infringing a mark which consisted of two lions rampant holding a shield?—No one could register a lion rampant to begin with, it is too common an object. But, assuming a man is on the register for a lion rampant, it would not be fair to him to register two lions rampant.

410. (*Mr. Hutton.*) Taking your own stamp of the wrestlers; supposing those wrestlers, instead of being European, were Chinese?—I shall come to that question of the difference of nationality in dealing with my third group.

411. (*Chairman.*) Subject to the other illustrations that you may give when the registrations come, have you said what you wanted under the second head?—Yes.

412. Then we come to the third:—"The variability "of the decisions of the officers, so that the Man- "chester trade is perplexed as to the rules which "guide the Board of Trade"?—That is a very serious matter with us. The Manchester merchants are a very law-abiding group of men, and they like to fall within rules when once they know them. Now the rules of the Trade Marks office are constantly changing. A stamp which is accepted to-day is refused to-morrow, or *vice versâ*. We never know what is capable of registration in consequence of the changeable decisions of the London office.

413. Do you mean they are sometimes more lax, and sometimes less lax?—Yes. Not only is it a question of laxity, but it is a question of procedure. They do not do the same things on two different occasions.

414. In what way?—I would put before the Committee some instances in which nationality or dress is held to be a distinguishing feature in the mark, and in certain other marks it is not held to be a distinguishing feature. Either the one case is right, or the other case. They cannot both be right, from my particular standpoint. Take the case of the football, No. 37,731. That, if I mistake not, is a Chinese or Japanese representation of the game of football. They are kicking a ball in the air. I think there are three figures. In the form in which that stamp 46,920 is registered that is simply the black key to the chromo-lithograph plate; and, consequently, the accessories of the game; trees, and the building behind the players, are brought into stronger relief by the use of the key plate than would be the case in the actual stamp—that is to say the houses look as prominent an object as the men. In reality, when it is printed in colour, all those accessories sink behind the scene, and only the players, who are represented as playing the same game of football, are left; and they are either Indians or Burmese. In either case it is a group of men playing football. The first stamp is the better of the two, because you can call it nothing else. The second stamp might be

a game of football played at the edge of a forest, or any other distinguishing form. The accessories do not improve the mark *per se*. But the idea of the stamp is clearly the same as the first one, it is a group of men playing football. Well now, the office passed 46,920, and it passed it on the ground that it is a different stamp from the first one. The owner of 37,731 takes a different view of it. He submits the two stamps to the judgment of a number of his friends, and, I think, without exception, they say that 46,920 ought not to have been put on the register without his assent. The owner of 46,920 does not see it in that light. The Registrar by passing this stamp has given it a value in his eyes which it did not previously possess. He thinks it is a good stamp because the office has passed it; and as they are better judges than he is he does not want to surrender the position which the office has given him. The two parties cannot settle the case amicably. They resolve to fight, and the owner of 37,731 enters notice of opposition against the owner of 46,920. The usual course is taken. Affidavits are drawn up on each side. They are very strong against 46,920, and ultimately 46,920 withdraws the stamp from the office; but he cannot withdraw it until he has paid the 55*l.* for the pleasure of 37,731 defending his rights. Now the judgment of the Manchester trade would be that 46,920 ought not to have been put on the register.

415. (*Chairman.*) According to you, 46,920 ought to have seen that he ought not to have been put on the register, and ought at once to have resolved not to fight, when he found that 37,731 objected?—There are men who think when they have a right, they will defend it at all hazards. I do not know whether it was the case with 46,920; but human nature is very much the same all over the world, and if a man thinks he has got a position that he ought not to recede from, he will no doubt defend it. I do not know why there was a fight between the two owners, but the fact is there was a fight.

416. Were people found who made affidavits that 46,920, according to the Manchester trade, was different from 37,731?—There were such affidavits; but the weight of the evidence, taking it from a layman's point of view, was decidedly against 46,920. I myself made a very strong affidavit for 37,731 after having carefully weighed all the facts of the case.

417. (*Mr. Hutton.*) That 46,920 was calculated to deceive the Indian?—It was.

418. They are both for the same market, I suppose?—I should assume they would be for the same market, as they fought over the question. They are both Eastern shippers, and both ship to the same markets.

419. Do Dewhurst's ship to India?—They ship to Bombay.

420. (*Baron Henry de Worms.*) Every form of the game of football you think ought to be prohibited?—Pardon me, I would not go so far as to say that every form of the game of football, after the first has been registered, ought to be stopped.

421. (*Chairman.*) Would you object to a single individual with a football in his hand?—I should pass that as a good mark. I should also pass the game of football in the next stamp, I think, Ryland's.

422. (*Mr. Hutton.*) Not on account of nationality?—Not on account of nationality; but it is a different representation altogether.

423. (*Chairman.*) Here the chief feature is the group of men standing in front, together, at the goal?—Yes, that is a perfectly different representation. You see there are some uprights there.

424. (*Mr. Hutton.*) Do the goods go out under the name of the goods with the football stamp?—I should imagine that they would. It is the custom of the trade to let the name go with the stamp; in fact, in my own practice, I have never allowed a stamp to go without a name, and it is registered with the stamp. For instance, if we send two alligators, we call it the two alligators stamp.

425. (*Baron Henry de Worms.*) How would you define *that*?—I should call that the football match.

426. Then how should you draw a distinction between the game of football as played in England and the game as played in India?—If the owner of the first stamp has registered the words "football mark," I should pass the second mark on the excision of the words "football mark."

427. (*Earl of Crawford.*) I thought the natives could not read?—We are speaking here of registration. It clearly would not be right to put on exactly the same word unless the first owner assented. This is the word part of the stamp. If it were put in with the representation of the game itself——

428. (*Baron Henry de Worms.*) That is not part of the stamp; it is not so regarded according to the Trade Marks office?—In my own practice I always put the name with the stamp, and they are registered together.

429. (*Mr. Hutton.*) In this case they are not?—In this case they are not.

430. (*Baron Henry de Worms.*) As a fact, the Board of Trade have nothing to do with the name?—They have nothing to do with the name, except a firm sends it in for registration.

431. The part that is registered is the trade mark *per se*?—And the name, if the name is sent with it. I make a very strong point of the name. Might I, in reference to the name, mention a point with regard to the practice of the office? In the mark of the well that you have recently looked at, one of the marks has no name. The second mark is called a Turkestan well in the desert. Now, it is the practice of the office in London, where a distinctive name is given, to accept the mark so sent in, in consequence of that distinctive name; and, as further illustrating that point, I would show the representation of a hen which has been registered. Now, the hen is one of the commonest objects in the Manchester trade. There is scarcely a shipper in existence who has not sent out at some time of his life a cock or a hen, or a hen and chickens. It is one of the commonest marks possible. The owner of that mark sent it in, and it was registered by the office. He has, apparently, only attained registration in virtue of the title that he has given to the stamp, where he calls it "the sitting hen." The mark itself is of no value whatever in point of law. There are too many users of hens.

432. You say it is not a distinctive device?—Certainly not. There are hundreds of such marks in common use in the trade; but because he has called it "the sitting hen" the London office has accepted it and put it upon the register; and I think it is the only hen that is so registered. I submit that it is not a distinctive device, and therefore ought not to have been registered on that ground. But I think I am right when I say that the Registrar himself suggested that the words "sitting hen" should be given to that stamp, and he then would register it. Now, that is playing with registration.

433. (*Chairman.*) You were dealing with the heading "the variability of the decisions," and you said you were going to call our attention to variability as regarded nationality. We have got rather away from that, I think?—I was asked the question in reference to the game of cricket, in the one case being an English game, and in the other a Japanese or Burmese game. The next marks I should submit to you were some billiards, but the marks are not present, and also some secretaries writing.

434. Is your point this, that sometimes the Board of Trade have regarded a difference of nationality in those who are shown as occupied at something or other, as creating a sufficient difference, and at other times they have not regarded the difference of nationality?—That is so; and I wanted to put in two stamps to show that in one case they make the difference of nationality a reason for acceptance, and in another case they make it a reason for refusal.

Mr. C. Bailey.

23 March 1887.

Mr. C. Bailey.

23 March 1887.

435. We had better reserve that, probably, until the illustrations come?—Then I have some king's heads that I want to show as another illustration of the same point. In further reference to the variability of the Registrar's decisions I shall ask, with your permission, for the exhibition of a skunk as a mark which has been accepted by the Registrar. It is an offensive animal—an American animal—and I cannot understand why a man would want it upon his goods. The fact is, it is the only mark on the register of a skunk. That is the animal. (*Producing mark.*) That is 46,226. Now, a man sends in that mark for registration, and the first question that would be asked would be: "What marks clash with it?" There is no other mark like it on the register, and yet he had to get the assent of an owner of a beaver. Why the office did not ask for a cow or an elephant, or any other mark, we cannot understand, but the fact is that that could not be registered until he had got the assent of the owner of a beaver who is not registered at all, but who was in the B. list. Then I should like to submit the basins mark.

436. (*Earl of Crawford.*) May I ask if the owner of the beaver objected?—The owner of the beaver gave his assent, as would naturally be the case. If I owned a beaver I would not prevent a man from putting a skunk on the register. That is a very curious fact, that a totally different object that has no relation whatever to it is quoted by the Registrar against the applicant, and he cannot register until he has got the assent of the owner of that different object. There are other marks that we could show where very much nearer resemblances have been totally overlooked by the office. I am speaking, of course, of the variability of the Registrar's decisions. The basins is an extremely good case as showing also the queerness of the Registrar's decisions. The basins is a very extraordinary case. It seems it is not here at present, but we shall have it very soon.

437. (*Baron Henry de Worms.*) To go back for a moment to the question of words. I understood you to say that the word was considered part of the trade mark?—I consider a word a good part of a trade mark.

438. I think on the 30th of April 1885 a letter was written by the Manchester Chamber of Commerce to the Board of Trade on that subject, in which the Manchester Chamber of Commerce objected to the registration of words?—Those are common words.

439. The answer was, that the Board of Trade purposes, as at present advised, to instruct the Comptroller-General to exclude, and so on, all words, letters, and figures, and so on. That was the answer. Well then, the other day the Comptroller was asked by Mr. Hutton whether those instructions were carried out, and he said he was not able to carry them out in the face of an Act of Parliament which says that words shall be registered; and a member of the Committee, Lord Macnaghten, said that is with regard to "fancy" words, that applies to "fancy" words only. You would not, I suppose, call the word "football" a fancy word?—Football would be a description of the mark, not a fancy word. It identifies the mark; it makes it clearer to the consumer what it is that is registered.

440. (*Chairman.*) A fancy word may be registered alone without anything else under the Act of Parliament?—I think so, but it must be a fancy word.

441. But when you have once a distinctive device, or mark, or ticket, then to that you may add any word which you please?—If it is a common word we ought to disclaim it as our personal property. The distinction is this: Take the football match. If the man called it "the football match" that is simply a word descriptive of the mark. It is not a fancy word, but it is descriptive of the mark. But if, in addition to that, the man also put above it "first quality," the Registrar would properly require the applicant to disclaim the registration of the words "first quality" as being the applicant's property. They are words that are common to the trade. Hundreds have used them besides himself.

442. (*Baron Henry de Worms.*) The Manchester Chamber of Commerce suggested that all dictionary words should be discontinued, like letters and figures?—Yes; that is *per se* as words, but they did not mean in conjunction with devices.

443. You object to the registration of the words "a soldier on horseback." It is in the letter of the Manchester Chamber of Commerce?—The sitting hen will be a very good illustration of what we are referring to. It is absurd to put on the words "sitting hen," and in virtue of that descriptive word to give the whole mark. The word "sitting" seemed to cover very much more than the word itself. It is made to cover the representation of the bird above it.

444. (*Chairman.*) You say that is not the addition to a distinctive mark of words, but it is trying to make the mark a distinctive one by the use of a word?—By the use of a descriptive word. That is wrong. We object to that. If you have a good mark, like, say our Pahliwan, the wrestlers, and you call it the Pahliwan mark, that is part and parcel of the thing that is registered. You not only register the two men wrestling, but the Indian name of the wrestlers.

445. (*Baron Henry de Worms.*) Apply that to the bicycle. You have a frog on a bicycle, you have a cat on a bicycle, and you have a man on a bicycle. How would you register the words? Would you call that the bicycle mark? Which is the bicycle mark?—You could not register it as a bicycle mark if there is an older one on the register with the word bicycle; but I see nothing to prevent a man calling it "the frog and the bicycle."

446. (*Earl of Crawford.*) Now you are getting back to what you told us at the very first, that you are going to deal with ignorant purchasers who do not know your language; and yet you are going to pass your "frog and bicycle" and "monkey and bicycle." How are they to read it?—We want the English name, which is put in English in most cases, to ward off the unprincipled attempts at imitation on the part of English competitors.

447. (*Chairman.*) And also, I suppose, as a means by which the goods may be ordered of you by your correspondent?—Undoubtedly that would be part of the use of the word. The English word itself is not readable by the consumer. It is no use to him; but it is of great importance to the owner of the mark. We say:—"Well now, we mean these to be two alligators," rather than two elephants; we make it distinct that our representation is the representation of the two alligators. It is not always possible to stamp a piece as distinctly as this (*producing a piece*). That is a very distinct stamp; it is a dholuck, or native drum. It is very clearly represented. There is no doubt that the native, who knows that object, will identify it. But it is on very good cloth, and it is very well stamped. Knowing that I should submit this to your Lordship, I had them specially well stamped. Where these are being stamped at the rate of 30 or 40 a minute—very quickly—you cannot get every stamp as perfect as this. So that an English merchant might say:—"Well, I did not understand when you charged me with copying your stamp that you had got some alligators. I did not know what they were;" but the name underneath—"two alligators"—you see protects the first owner, and wards off the English imitator.

448. (*Baron Henry de Worms.*) One is for the native and the other for the Englishman?—Yes.

449. (*Mr. Hutton.*) The real value is the device?—The value is the device in the market where the English language is not known; where it is not read.

450. (*Earl of Crawford.*) Still the sitting hen is protected here, and there is another hen out in the market offered to the Indian, who will not pay any attention to the words, and yet he will buy the hen-marked goods?—Yes; there is the wrong done to the Manchester trade by an advantage having been given to a merchant who has no right to a sitting hen. It is

a wrong done to all of us, who cannot register a hen. We might perhaps have called it a shaved hen, with a few feathers shaved off; but that is no reason why we should have a hen put on goods with the loss of a few feathers that are shaved off, and so call it a shaved hen.

451. (*Mr. Hutton.*) Are there other stamps of that description which have been registered with words?—Yes; I am sorry to say some years ago the Registrar frequently registered similar marks. I brought under the notice of Mr. Chamberlain, the then President of the Board of Trade, some illustrations of soldiers on horseback; and one mark I particularly remember drawing his attention to, in which a firm had put on the words "Runjeet Singh," under the mark. That word "Runjeet Singh" meaning that the representation was that of that noble, was sufficient distinction, and it was registered for the firm with the words "Runjeet Singh." I contended before Mr. Chamberlain that that was an improper registration of a stamp. It was a common object to which a particular name was given which no consumer could read.

452. The stamp had been registered?—The stamp was registered in virtue of the words "Runjeet Singh."

453. Had it been registered before without "Runjeet Singh"?—It could not be registered without.

454. They refused to register it without?—Undoubtedly; there are too many soldiers on horseback.

455. (*Earl of Crawford.*) It is an identical case with the sitting hen?—Yes. I see that we mentioned it in our letter to the Comptroller-General of the 30th of April 1885, pages 50 and 51 of our 1885 report.

456. (*Baron Henry de Worms.*) What you call qualifying words?—Yes. It is in virtue of those qualifying words that men were able to get on the Register marks that they had no business to have put on, and we naturally protested against the Act being abused by the admission of such marks.

457. As the result of that the Board of Trade for some time ceased to register any words?—Qualifying words—yes.

458. (*Lord Macnaghten.*) Can you tell me when the sitting hen was registered, and can you give me the date also of "Runjeet Singh"?—I can give you the number which will give the date. "Runjeet Singh" is 41,710.

459. (*Chairman.*) 46,000 is 1885; it would be probably the beginning of 1885?—Yes. The sitting hen we do not give the number of in our letter.

460. Does that cover all you have to say on the question of variability, subject to the illustrations?—Yes, until the illustrations come. We have some extraordinary cases there to show the queerness of the decisions of the Registrar, particularly the case of basins. I should not like that to be overlooked.

461. Velveteens and pile goods, if made of cotton, would come properly under class 24 as cotton piece goods?—Certainly.

462. Do you suggest that there would be great difficulty in making velveteens a distinct class, because it is difficult to tell when they would cease to be velveteens and become sateens?—It is so; the distinction is so fine that it is impossible to draw it. There is a class in cotton piece goods, I think it is the 25th, which permits goods to be registered which cannot be included in classes 23 and 24, and that, I submit, is the proper class for anything that is excluded by the 24th class.

463. Have you got now any other instances to show us?—I am sorry that the instances I have to bring under your notice, under my second head,—the instances of performing tigers; three rifles; and bicycles—have not come, and with your permission I will pass from that. I am extremely desirous of bringing these cases under the attention of the Committee, because they illustrate a point which we regard as very vital in Manchester, and if they are not available at present I will wait in London until the next meeting of the Committee in order that these shall be seen by the Committee.

464. Then take those instances you have here?—I will take, in the first instance, my third heading, where I am trying to illustrate the great variability of the decisions of the officials in London, and under that heading I will submit a series of marks referring to basins. No. 36,163 is a mark which has been applied for (*producing same*). It consists of three bowls or basins, with a few palm leaves or bamboo leaves at the top, and at the bottom, and between the bowls; but we should regard the bamboo leaves at the top and the bottom, and the ornaments in the corners as forming no part of the mark which is registered. The ornaments in the corners are ornaments which occur in thousands of tickets; the border, in fact, is no part of the mark which the Registrar's paper covers. When that mark is sent in any ordinary individual acquainted with the needs of the Manchester trade would at once ask for basins, and they would be quoted against it by any officer who was searching the records of the office. One mark is missing that I have asked for. I suppose it will come at our next meeting. The mark 18,322, which is the older mark, as you will see from the numbering, is a mark of a common basin pure and simple, with no surroundings and no leaves. We contend that three basins ought not to be put on the Register without the sanction of the owner of the one basin, but the mark 31,163 is passed without any reference to the owner of the one basin. He has a second basin filled with cucumbers or something of that kind (*producing same*) for which no consent is asked by the owner of 36,163. 20,775 (*producing same*) is another mark which again is not referred to. I wish the Committee specially to look at the similarity of those objects with the mark applied for, which is 36,163.

465. Would not 36,163 be known as the three-basins mark?—It is possible that it might be. The one basin, that is 18,322, is a pure basin, that is to say, there is nothing in it. Now it will scarcely be credible that the mark which is quoted against that three-basin mark, and without the consent of the owner of which, the owner of the three basins could not register is a mark this distance off (*producing another mark*). That is one of these decisions, my Lord, that we cannot understand in Manchester, and it illustrates the want of knowledge of the common elements of a mark when four fans are quoted against a mark which is a mark of a basin, and other basins are ignored.

466. (*Mr. Hutton.*) Do you mean that the firm owning this four-fans mark were applied to, to give their consent?—Decidedly, and the owner of the three basins could not register until he had obtained the sanction of the owners of the four-fans mark.

467. Which they did not refuse?—Certainly not. Now if that is to be a guide to merchants in Manchester in knowing what sort of marks they can devise and send in to the office, you will see, my Lord, how impossible it will be for merchants to design marks when marks of that character are quoted against them.

468. (*Chairman.*) I should like to ask, in connection with this, do you suggest when a man has once registered a single basin, with nothing on it, that no combination of basins ought afterwards to be registered?—When the basins are basins pure and simple; that is to say, where the idea of the mark is that of three basins or two basins, the owner of the one basin should give his consent before the three basins are put on the Register. It is an extremely common thing, my Lord.

469. (*Baron Henry de Worms.*) Would not that apply to a trade mark with a man—that a man who registered a trade mark with a single man could debar another man registering a regiment?—Perhaps I may illustrate the case by knowledge of the practice rather than from argument. My firm is the largest user of trade marks in class 24 of any firm in the world. We applied for several thousands of marks in 1875. We

Mr. C. Bailey.

23 March 1887.

put them in. They are in the office. Out of the number so sent in I believe we are registered for 500 marks used prior to 1875. It is the practice of my firm to duplicate, triplicate, and quadruplicate our marks, for the purpose of getting as many marks as we can that are distinctive. After we have sent one basin we send two basins, and three and four basins. We have many such duplications on the Register. It is the frequent practice to do this. A man may have a demi-bear for example and use it as a mark, and then if he wants to distinguish something else he will send in two demi-bears.

470. (*Chairman.*) Why need you send it in at all if your one is really supposed to cover the two, and to prevent anybody else using the two?—I wish to illustrate the point that where an object has got into the hands of a firm that is using it, the usage in Manchester is to continue the object by duplicating it, and triplicating it. It is probably not known by the officials in London, and that is one of the points that Manchester brings up here by asking that whoever administers the Act shall at least have a knowledge of the usages of the trade. This point illustrates it. You get an illustration of the necessity of knowing what the trade requires, and at the same time it illustrates the other point, namely, the absurdity of asking for the consent of the owner of fans when basins are at stake. Then, as illustrating the variability of the officials in London, the question of costume or nationality has frequently been raised. I submit two marks, 35,156 and 38,851, as marks representing billiard playing (*producing same*). In the older mark are two Chinese playing at a table with four pendent lights. The second mark, 38,851, represents Hindoos or Indians playing at a billiard table. There are five or six men in the one case, there are only two men in the other, and there are half a dozen pendent lights, as against four in the first one It is a billiard-playing scene. The second mark, 38,851, is put upon the Register without any reference to 35,156, the Registrar evidently regarding the difference of nationality as being sufficient to distinguish the two marks—a Hindoo cannot be a Chinaman—and therefore when Hindoos play billiards it is a good mark as against Chinese.

471. Or perhaps it is because the one is a game of pool and the other an ordinary game of billiards?—If the distinction which I tried to draw at the beginning of my evidence, namely, that the idea of the mark is the chief thing which is to be upon the Register, so minute a distinction as the difference between ordinary cannon playing and pool playing will disappear.

472. (*Baron de Worms.*) You must take into consideration that there is a description written at the bottom of the trade mark, "Pool playing"?—I did not notice the description; probably the mark is put on in virtue of the description of the mark, and in such a case, if that was the reason for its being put on the Register, it is on all-fours with that shaved hen which I referred to a little time ago. Here, again, are two marks where there is again a difference in costume, Nos. 42,983 and 49,963 (*producing same*). They are both Oriental scenes. One appears to be Turkish and the other Chinese. These two designs are very much further from each other than are the two billiard-playing scenes. The mark 49,963 cannot go on to the Register without having the sanction of 42,983. There is an instance where difference of costume or difference of nationality is held to constitute similarity of stamp. Now the one set or the other would mislead an ordinary Manchester merchant in knowing what he ought to send to the office for registration. Either the costume means everything or it means nothing.

473. (*Mr. Hutton.*) Both these are by consent?—Yes, by consent of some other mark. Then the next set I will submit as illustrating the same point are three Nos. 33,932, 47,693, and 50,148 (*producing same*). 33,932 is the first mark. It represents Chinese letter writing. It has "Mark refused" in the corner. No doubt some mark is quoted against it, but that does not interfere with the point I bring it up for now. The next mark, 47,693, I understand, is also refused, but it does not so appear.

474. (*Chairman.*) It seems to have been accepted because it has got the stamp?—My belief is that that also is refused, although it is not so marked. Then 50,148 is sent in. That is exactly the same mark as 33,932, but it is in color.

475. (*Mr. Hutton.*) It is registered?—50,148 is registered. It is the same owner also as the first one. The office seems to have refused it in the first instance and to have accepted in the last instance.

476. (*Lord Macnaghten.*) Is not it possible that he might have got the second time the consent of the person owning the other mark?—It is not marked "By consent."

477. (*Baron de Worms.*) It could not have anything to do with the colour?—I should think not.

478. (*Lord Macnaghten.*) It is possible that he may have got the consent of the person who was an obstacle to his registering the first mark?—I do not think there is anything marked which shows that consent. It is marked "Second application," on the top. Therefore it shows it is the same as the first one. I think these cases will illustrate the difference of nationality as being a vital matter in some marks and not being vital in others. Now another point of the decisions of the London office proving disadvantageous to the Manchester trade is illustrated by the case I am about to present, but unfortunately the middle mark which has been asked for is not here. It can be seen by the Committee, of course, afterwards. I will explain what the mark represents. The first is 17,138. It represents a couple of men engaged in the common operation of sawing a log. For some reason or other the owner of 17,138 does not register it; either he goes out of business, or he fails to take the steps necessary for registration. Then 16,633M, which is not in your hand, but which is one that has been asked for, is sent in by a firm at Manchester. There the elements of the mark are exactly as in the first, that is to say, there are two men cutting a log of wood. The second mark is refused on the ground of its similarity to 17,138, notwithstanding 17,138 is not on the Register. The owner has not paid the fees for registration, and therefore it does not exist as a registened mark, but 16,633M is refused. Then 37,748, which is again the same mark slightly differently treated, namely, two sawyers cutting a log, is put upon the Register without any reference to 17,138 or 16,633M. By the registration of that mark a great injustice is done to the owner of 16,633M. An opponent of his sends in a mark a year or two afterwards and gets that which the office has refused to give a couple of years before. Now that is a decision which we in Manchester do not understand. The probability is that it arises from the fact that the refused marks were not quoted against the applicants. In this case, it being a refused mark, the owner of 37,748 has not heard of it, but it does not in any sense explain the injustice done to the earlier applicant. The next marks to put in are two kings with flags and other surroundings. Their surroundings are extremely alike. The mark 51,500 (*producing same*), being later than 48,541, obtains registration without any reference to the owner of 48,541. There is a difference in the monarchs, but when you come to put these two marks in the form in which I have drawn them (*producing drawings*) and to impress them upon cloth which has a very open texture, the difference between these two marks will be inconsiderable. The main points of he marks would be alike.

479. (*Earl of Crawford.*) There is a name?—The name would be different. The name is on each.

480. (*Chairman.*) You say that all that would be suggested would be a man in an oval frame with a crown on the top of him with a flag on each side?—Yes. The elements of the two marks are so nearly alike, that the later mark ought not to have been put on the Register without reference to the earlier owner.

481. (*Mr. Hutton*). How would it apply to the Queen of England?—Well I think the Queen of

England is unregisterable. I think they will not take in any Royal personages or arms. I think that is in the Act.

482. How would it apply to the Emperor of Russia, or the Emperor of Germany?—Possibly the Queen might get registered in combination with some other thing that is registerable. Then here is a mark of a dog with a letter in his mouth, No. 34,723, (*producing same*). It is a common object. There are other merchants who use dogs with letters in their mouths. Therefore the Registrar is right in refusing it as a mark capable of registration, and he therefore throws it out That was refused, and properly refused, registration; 34,724 consists of the same objects arranged in a circle, there are eight dogs with letters in their mouths. That is registered. I could not go so far as to say that the first ought not to be registered. I think that there is a fair ground for the Registrar accepting the circle of dogs' heads as a good mark. If you will turn now to 35,095 you have a circle of watches treated in exactly the same way as the circle of dogs' heads. The watches are refused, the dogs' heads are registered. The watch is a common object, the dog is a common object.

483. (*Chairman.*) There must have been consent in the case of the dogs. It is the same firm?—At any rate a watch is a common object, just like a dog.

484. (*Baron de Worms.*) Why were they refused?—Why was a single watch refused?

485. Yes?—On the ground that there are more than three owners of watches in the Manchester marks.

486. (*Earl of Crawford.*) It was refused under subsection (*b*) of section 74?—Yes. What I am pointing out is the variability of the decisions. If the decision is a sound one in reference to the circle of dogs, it cannot be a sound one with reference to the circle of watches.

487. (*Chairman.*) Might not they refuse the circle of watches because it is too like the circle of dogs, because the idea was the collection of eight objects in a circle?—I think it is the same firm that sends it, so that that ceases to be a reason. It may be that there is a circle of padlocks or something else which the Registrar may have considered was against the registration of the circle of watches. I do not know that; I merely submit it as an illustration of how one mark is accepted when treated in one form, and how another mark is rejected when treated in the same form. This is a most extraordinary instance of the variability of the Registrar's decisions. It is our friend the skunk. That is the original mark applied for (*producing same*). The applicant could not obtain registration until leave had been granted by the owner of mark 15,906M. The Registrar refused to register the skunk until the owner of a beaver had given consent. Now, the similarity of the two we in Manchester are quite ignorant of. Then if you will turn over the page you will find another beaver. The owner of the second beaver was not asked to give his consent. If you will turn over the page again you will find another beaver. The owner of that beaver is not asked to give his consent.

488. (*Mr. Hutton.*) Are all these three registered?—No, these are in the B. list.

489. Then these are put there by the Manchester experts?—By the Manchester experts. They are very properly in the B. list. We do not object to the beavers being in the B. list, but what we object to is that the Registrar should go so far wide of his duties as to single out a beaver to quote against a skunk. That is an illustration of his severity, rather than his laxity.

490. (*Chairman.*) According to your own view, if there was a slight change in the position of this skunk, might not a native, who did not know either a beaver or a skunk, think they were representations of the same animal?—That is perfectly true, and if the decisions of the Registrar were uniform, I should have nothing to say to it. I think the Registrar ought to be strict in the admission of new marks to registration. That is the Manchester contention. We should never blame him for being too strict, but I put this in merely to show that before a skunk can get admitted to the Register, he must get the consent of the owner of a beaver; but when three basins are sent in for registration, the owner of the three basins must get the consent of the owner of the four fans. When other marks, which are very much nearer each other than those which I have been showing are wanted to be put on to the Register, they are not quoted one against the other. That, my Lord, will complete that part of my evidence. It should, however, be noted that these are only representative cases.

Mr. RUDOLPH DEHN called in and examined.

491. (*Chairman.*) Are you in business in Manchester?—Yes.

492. Is your business connected with the shipping of goods to foreign countries?—To all parts.

493. Have you given attention to the question of the registration of trade marks?—Yes.

494. You desire to make some observations to the Committee with regard to the working of the Act?—Yes.

495. Would you favour the Committee with your views upon the subject?—I think, my Lord, I may begin at paragraph 1 of Mr. Bailey's statement, that the officials in London are not conversant with the usages of the Manchester trade, and I believe a very forcible argument is this, that the Act distinctly says that the registration of fancy words shall be admitted, but that no other registration of common words, as I suppose we may take it, is admissible. In 1884, soon after the passing of the Act of 1883, we first found in Manchester that certain words were registered. I may mention that my firm sent up a large number of words to the Registrar, and we were very much surprised to find that a large number of those words were admitted upon the Register. After finding that we were constituted proprietors of geographical names such as "Santander," or the word "Mayo," we wrote up to the Registrar asking him whether he would not delay the registration of words, since they were entirely opposed to the opinion of the trade, and the answer was that that could not be done. Of course it was left to my firm to register or not to register. We were then bound to get up the agitation which has gone on ever since from Manchester against the registration of word marks. If your Lordship will allow me, I will just mention three marks that were advertised for registration. In mark 38,691 you will observe in small type, "Le meilleur du monde" is registered (*producing mark*). I would then refer to 42,189, where "Boulevard velveteen unsurpassable—Best make in the world" is applied for. I would then go on to 43,836, which is, "Second to none velveteen." Those three marks were advertised for registration as trade marks. I may submit that the meaning of all three is exactly the same, and that the title which would have been given by the registration to those three firms to call their goods the best make in the world ought not to be given. The mark 42,189 was applied for by an American firm, who would be, as I pointed out to Mr. Chamberlain, able to buy their goods in Berlin, where there are large velveteen manufacturers, and prohibit any British manufacturer from calling his goods the best make in the world. Other instances are No. 38,447, "Sanspareil," which means the same, I should say; 39,410, "Marvellous," and 38,446, "The marvellous." Here we have also a man obtaining the right of calling his goods "The marvellous" goods, which no doubt every merchant in the universe would like to have the right to do; but we do not consider it admissible.

496. These were registered by the same people, apparently?—By the same people. Then we have

Mr. R. Dehn.

23 March 1887.

marks descriptive of quality or texture, such as 39,194, "Damassé."

497. What is the meaning of "Damassé"?—It means damasked. It is simply goods of a certain texture. Then we have 38,215, "Bordato Italiano," which is a translation of "Italian checks," and a very common trade name for a certain texture of ginghams, registered as a trade mark.

498. You would say that none of these were fancy names?—None of these are fancy names; I should mention that most of the words that I have given, with the exception of "Bordato Italiano," have been given for velveteen. Mr. Bailey described before that there was a sub-division of class 24, and if your Lordship refers to the remarks at the bottom of, for instance, No. 42,189, it says they are for cotton goods, say cotton velveteens.

499. (*Chairman.*) "New," I suppose, means since 1875?—That means that the mark is used since 1875.

500. What is there to show that this is a sub-division of class 24?—All these marks, such as "Sanspareil," are in the Manchester Trade Mark Registry registered for velveteens only. The remark that we have heard as to them at Manchester so far, is that they were registered for velveteens only. No. 40,379, for instance, is "The Preston Velveteen." Preston is a large manufacturing centre in Lancashire, and we consider that that is not admissible. All these matters were then pointed out repeatedly to the Board of Trade, but we have never had the attention given to the matter that we think it ought to have had, because the registration of word marks is going on up to this very day.

501. Have they continued to register marks that are merely the names of places or qualities?—Yes, my Lord; at all events, common stamps.

502. What is the latest to which you can refer?—59,961 is advertised for registration now.

503. (*Baron Henry de Worms.*) What is that?—"El Especial." We have been informed that there is a mistake as to that.

504. (*Mr. Hutton.*) That is one of the marks you have handed in?—Yes; and 59,960, "Numero Mil."

505. (*Lord Macnaghten.*) Do you say one is being advertised now?—Those are advertised now for registration. They have been advertised a few weeks ago for registration.

506. (*Chairman.*) One of these is dated 1st December 1886. Is that registered?—We inquired in Manchester, but we have not learned that it has been withdrawn recently.

507. (*Lord Macnaghten.*) You are aware of a decision on this point, not very long ago?—If you refer to the decision as to "Electric," I am aware of that.

508. That was one of them?—But the representations from Manchester were made long before.

509. (*Chairman.*) If the decisions which have been recently given were carried out they would meet your objections upon this point, would not they?—I do not think so, because we think that the decisions that have been given, are as confusing to the mind of the Manchester merchants as anything could be; what we really want, and what we think we ought to have, is that registration of words for class 24 should not be admitted at all. Our reason for this is the following. Under the Act of 1875, the registration of word marks was not admitted unless for any special or distinctive word used before 1875. The Committee of Experts who were appointed under the Commissioners of Patents came to the decision that no word marks of any kind should be registered, and upon this the trade has ever since relied. The Registrar has obliged people at the beginning to endorse on the back of their applications that they disclaim the right to the particular words, and the trade relied on the impossibility of registering word marks until after the Act of 1883, when the Registrar began to register such words as those I have referred to, and caused enormous confusion.

510. Does not the fact that people in Manchester do register these word marks tend to show that there are some, at least, who desire to register word marks?—I cannot give a better argument than that my firm has refused to go on with what the Registrar has given. I can say from my experience as a member of the Trade Marks Committee that we have not received any single complaint of a man who has been refused a word mark.

511. Why do people register word marks if nobody wants them, then?—If people send them in at all, it is done simply for fear that somebody else might send them in, and as evidence of user, but not with any hope or intention of getting registration at all. There is, in fact, an impossibility of equitably registering words, because the Board of Trade does not possess a record of the word stamps that have been used. Words are made up of single letters. We stamp our words. I have brought a small stamp, to show how we stamp our words in Manchester (*producing same*). It enables us by a simple alphabet to stamp any words that are required, but we possess no record of the words that have been used. When the decision of the Committee of Experts was given, that words should not be registered, the trade relied on it, and therefore the Trade Mark Office possesses no record of the words that are used. But notwithstanding this, the London officials have lately gone on as if they possessed that record.

512. But they cannot help registering fancy words if they are tendered for registration, without altering the Act of Parliament?—They do not know what a fancy word is, and we do not know it either.

513. I think I could give a definition of "fancy word" as a word which has no relation either to the place of manufacture, or quality of manufacture, or the thing manufactured, but which is purely fanciful as applied to the particular goods?—We could not accept that definition in Manchester, for the very reason that for the last 50 or 100 years we have been in the habit of using all sorts of words upon our goods for South America.

514. What you mean to say is that they are not new fancy words, because such fancy words have already been used; but they may be fancy words still?—We have always understood fancy words—in fact until the Act of 1883 was passed, we understood in Manchester that fancy words meant coined words—words that could not be found in any dictionary. I may cite the word "Dislixum," which is the only fancy word that I can find, and that I could certainly register under this Act, because that is a fancy word; but when we have been in the habit for 50 or 100 years in Manchester of stamping all sorts of words, together with our marks, on goods, we feel it a hardship that we should suddenly either be called upon to register all the words that we have used, or that the Registrar should, in the face of old usage of the trade, go against the desire of the whole commercial community by putting words on the Register which we have always contended are impossible for registration.

515. He cannot alter the Act of Parliament. If such words are fancy words he is bound to register them, but it may be a very good reason for altering the Act of Parliament?—Then it would certainly be the desire of Manchester to alter the Act of Parliament.

516. By taking out "fancy words" as one of the trade marks that may be registered?—Yes; as far as the cotton classes are concerned.

517. (*Mr. Hutton.*) The complaint that you make is not only that he registers fancy words, but words in common use?—Yes; such as some of the instances I have given.

518. (*Chairman.*) That would seem to be probably in contravention of, at all events, the intention of the Act of Parliament. You do not only object to his registering words that are descriptive of quality or place, but you object to any registration of fancy words on account of the difficulty of ascertaining whether other people have used them before in rela-

tion to the same goods?—Quite so; and if I may mention, here this view has been taken to a certain extent by the Registrar with regard to letters and figures. He has discontinued to register them, and in discontinuing to register them he has written to my firm: "The Committee of Experts, as you are no "doubt aware, agreed, under sanction of the Com- "missioners of Patents, to ignore all such claims, "and it would not be fair to that portion of the "public interested in the cotton trade, who have "relied upon the decision of the Committee of "Experts as a settlement of the question, to accept "claims for letters and figures without a public and "full discussion of the question as an argument in a "court of law would secure." In the face of this, referring to letters and figures, the Registrar has gone against the Committee of Experts totally with regard to words, and if one thing holds good here, we contend that it should have held good for words as well.

519. (*Mr. Hutton.*) Have the trade ever considered there was any property or any value in words which are registered?—Never; they have always been satisfied not to register a word.

520. That is as regards cotton trade marks. Is not it the custom in South America and in the West Indian trade to stamp words more than designs, or quite as much as designs?—Quite as much as designs.

521. (*Chairman.*) Is there any other point you wish to mention?—I should like to mention the practice of registering "cautions" in connexion with trade marks. At the end of the pile of marks which you have there, there is one mark, No. 24,336, which is registered, in which you find the manufacturer has adopted this heading as his trade mark, "Imitators beware." It was admitted by the Registrar that it was a mistake to register that mark without a disclaimer of the heading. Then, in March 1886, the manufacturer sent the same stamp in, but added the translation of his caution in Chinese, and notwithstanding the fact that the Registrar had admitted his mistake, he goes on and registers this mark again, thereby misleading not only the British shippers but Chinese dealers in these goods. We contend that the number of the registered mark or the stamp "Registered trade mark No." so-and-so is sufficient protection, and that a caution of this kind, which is misleading and disentitled to protection in a court of law, should not have been put on.

522. (*Baron Henry de Worms.*) Do I understand you to say that he put that notice on as part of the trade mark?—He puts this notice on the application form for a trade mark.

523. And it was registered as such?—It was registered together with this caution, but it was admitted to be by mistake that the heading had ever been registered, and by a subsequent registration the Registrar repeats the same error and accepts this mark again.

524. (*Chairman.*) With that translation into Chinese?—With that which makes it decidedly worse to the trade than anything before.

525. Do you know that the Chinese is a translation?—It was so endorsed on the back of the application. Another matter that I should like to point out is this: As Mr. Bailey has mentioned, the words descriptive of the mark should in his opinion be allowed to form a portion of the mark, but if that is the case you will find it is impossible, I think, to register any words in future, and that is just what we want, because words must naturally, to a great extent, be descriptive of the device. For instance, the words "El cazador," No. 34,963, has been registered; it means the huntsman. There is a large number of "huntsman" stamps in use. Therefore, if an article is known as "huntsman shirtings," you could not agree to let a man stamp the word where another has the device. The word would undoubtedly interfere with the right to the device, in our opinion, and that is a strong argument which we should like to bring forward against the registration of words with the enormous number of devices that we have on the register. The Comptroller has decided that a word registered in one language covers it in all languages, and we quite agree with that decision.

526. (*Lord Macnaghten.*) Then nobody could register the word "huntsman"?—No.

527. (*Chairman.*) Are you objecting to the registration of words by themselves?—By themselves. I mention this to show why the registration of words is impracticable.

528. You are not objecting, where you have a distinctive device, to a man being allowed to put what words he likes underneath it?—Not the least, as long as the registration of words is abolished as such.

529. I understand you do not object to a device being registered with a word underneath?—Not if it is descriptive of the device.

530. It is only to the use of the word alone that you object?—Quite so.

531. (*Baron Henry de Worms.*) Supposing you were to have a huntsman drawn on a die, and underneath it written "El cazador," would you object to that?—I should not object to the registration of that.

532. Although the words "El cazador" were already registered?—No, exactly because the words "El cazador" were not registered. Another matter which shows again the misunderstanding of what we require is, that with regard to these matters we were informed on the 21st May 1885 by Mr. Reader Lack that the Board of Trade had granted the abolition of word marks, and on the 14th July in the same year, without any reference being made to such a letter, we were informed that the registration of words must be proceeded with in the face of the Act of Parliament of 1883. In face of the strong representations made by the Manchester merchants that I must say that at least it is a slight on the commercial community of Manchester that within so short a time, and after the Act had been passed two years, the officials of the Trade Marks office should within two months give us two decisions which were exactly opposed to each other. Really, as far as these questions are considered in Manchester now, it is oppressive. We feel that we have no protection. We feel we are oppressed by the London officials, and we must give such an amount of time and labour in watching the proceedings of the London officials that it will be impossible for us to continue it if we are to have word marks registered at all.

533. (*Mr. Hutton.*) Your firm have taken special interest in this question, have not you?—Yes.

534. For the last 30 years your firm has been engaged in this trade, and been connected with word marking?—Yes.

535. Was there any dissatisfaction with the stamping of goods with word marks before the Act of 1883?—None whatever. We were all satisfied that we could not register word marks.

536. It is only since the Act of 1883 that there has been dissatisfaction?—Only since those marks which I have mentioned were placed upon the register.

537. Does your firm now register words at all under the Act?—No; we have refused to go on with those that have been allotted to us, and we do not send any more words in.

538. Because it is useless?—Because it is useless. We do not consider that there is any property in them, or that there should be any property in them.

539. (*Earl of Crawford.*) Practically, what would satisfy you would be to leave out those words in the 64th section of the Act—"or fancy word or words not in common use"?—As far as this point is concerned.

540. You admit "a distinctive device, mark, brand, heading"?—"Heading" we have already got, we consider.

Mr. R. Dehn.

13 March 1887.

541. And you admit "label, ticket," and then you would leave out the words "or fancy word or words not in common use"?—Quite so.

542. Then "there may be added to any one or "more of these particulars any letters, words, or "figures," and so on. You do not object to that?—I do not object to it, but as to words such as "first quality," or any common words, they are covered by clause 74 of the Act, in which it is said, "The appli- "cant for entry of any such common particular or "particulars must, however, disclaim in his applica- "tion any right to the exclusive use of the same."

543. It would satisfy you if those words were out?—That would satisfy me. The words were not in the Act of 1875.

544. (*Mr. Hutton.*) I do not know whether you have any information to give us relative to the stamping of devices. Having heard Mr. Bailey's evidence, I do not know whether there is anything you think desirable to add yourself?—We are quite unanimous in accepting the statements that Mr. Bailey has made here to-day, and that he has made to the officials of the Board of Trade before. The Committee of Trade Marks is quite at one with him on these points.

545. (*Chairman.*) You have nothing further to add beyond what you have now added?—No.

The witness withdrew.

S. A. Fulda.

MR. SIGISMOND ANTHONY FULDA called in and examined.

546. (*Chairman.*) Are you engaged in business in Manchester?—Yes.

547. Are you engaged in, or have you been engaged, in the export trade?—Yes.

548. Have you paid attention to the question of trade marks and the working of the Act of 1883?—A great deal. I have paid attention to that since the Act of 1875 came into operation.

549. I think you were one of the committee of experts who were appointed after the Act of 1875?—Yes, my Lord.

550. Will you favour us with your views as to the obstacles to the satisfactory working of the Act?—Yes. Perhaps your Lordship will allow me, as you have asked me this question, to refer to the beginning of the law which was passed in 1875 as regards trade marks. When we in Manchester at the beginning of January 1876 saw that law before us we were perfectly astounded. There was an association formed at that time which established itself on the ground that the new law would bring on endless litigation. That Trade Marks Association intended to fight for its rights. There was a lawyer appointed who would fight for the trade marks which might be attacked; and the people who joined the association had to pay a certain amount as an entrance fee, and so much a year subscription. The people who belonged to the association had to send their stamps, or were preparing them. At that time some of the merchants, amongst whom I was, saw at once that the thing would never work for Manchester. We got up a very strong petition to the Chamber of Commerce, and proved that with the innumerable quantity of open and private stamps and trade marks which existed in Manchester the thing could never work, and then the Chamber of Commerce, the very Trade Mark Association which was got up to work the Act, signed the petition, and sent up a deputation to the late Lord Cairns. I belonged to that deputation, and we explained to him then how many trade marks there were both open and private; Mr. Reader Lack was present at the time, and owing to that deputation the office in Manchester was established. If your Lordship wishes to know about our duties at the office I shall be very glad to give you the information.

551. When you say "our duties" do you refer to the committee of experts?—Yes, having been an expert myself I was appointed a member of the committee.

552. How were the committee of experts appointed?—The committee of experts were recommended by the Chamber of Commerce of Manchester, and appointed by the Commissioners of patents.

553. The work entrusted to them was to distinguish between the marks which ought to be registered and those which ought to be treated as common property?—Exactly so. Here is the appointment which I got (*producing same*).

554. They divided the trade marks into two classes—Class A, trade marks that were entitled to be registered; and Class B, trade marks that were common property?—Yes, but there were also some stamps which were entirely refused, which were not put in any class, because it was evident from the inquiries we made, and from experience of the trade which we had, that they were imitations that had no right to be considered.

555. Now with regard to the Act of 1883, what have you to say?—The Act of 1883 upset us as experts. We had been working for nothing for years. So it upset us, as Mr. Dehn said, with reference to words. We had taken a great deal of trouble, but we found it was not workable because there were so many marks of every kind. Amongst other things, we as experts passed a resolution to the following effect: "That letters, words, monograms, "and headings combined without a device be passed "into the second class," and we passed a resolution: "That the committee is of opinion that no one indi- "vidual or firm ought to get the right to the use of "certain letters to the exclusion of others whose "initials may be the same, or who may be in the "habit of using the same letters in the regular course "of their business. It is well known to the com- "mittee that a great number of combinations of "letters common to the trade have not been applied "for because it was supposed that the common use "of them prevented them from being registerable, "whilst others that had been applied for have been "withdrawn, and the committee now confirm the "decision it had previously arrived at that, in the "yarn class, letters or combinations of letters are not "registerable." The question of words was discussed several times. On the 8th March a resolution was passed that "the committee decide that all words, or "combinations of words used as trade marks be put "into the second class."

556. What was the effect of putting them into the second class?—They could not get a first-class certificate. The effect of putting them into the second class was that anybody having a second class mark could take out a certificate of refusal to show that he had applied for it. If he could show that he had used the mark in a certain place and somebody had used it in order to make his goods appear like his, then he could get a certificate of refusal and proceed against the man for using it in that market. You would not get an absolute title to the mark.

557. (*Mr. Hutton.*) In the first class they were registered?—They were registered, and then the second class was formed too, because there were a good many of the marks which were common to the trade. This was the resolution which was passed: "The "committee decide that all words or combinations of "words used as trade marks be put in the second "class." Then the matter was discussed again. I was the member who proposed this resolution. Mr. Lord, who was formerly president of the Chamber, voted against it. The resolution was: "That the resolution of last Friday respecting words "as trade marks be rescinded, and that in future such "marks be dealt with as all other marks and designs "have been dealt with by the committee in their "previous deliberations." Then there was an amend-

ment moved by Mr. Lord, and seconded by Mr. Chapman, "the previous question," and that was carried.

558. (*Mr. Hutton.*) All words were excluded?—Entirely.

559. And headings?—And headings. We excluded headings too.

560. (*Chairman.*) Do you object to headings being registered as distinctive marks?—Most certainly we do. A great many were sent in. I believe we examined some hundreds. We came to the conclusion that it was impossible to allow them.

561. Had there been any suggestion from Manchester which led to headings being put into the Act of 1883, do you know. Were there some people who wanted headings put in?—I do not know of any case, except that which we have had before us. I do not think that headings are in the Act of 1883. Our resolution about headings was taken on the 29th March 1878.

562. Yes, the Act of 1883 enables to be registered "a distinctive device, mark, brand, heading, label, ticket"?—Well, it has never been done. I never knew of any case, except Mr. Hoyle's, where a heading has been registered.

563. As far as I read the Act, it would seem that anybody has a right to register a heading who desires to register it?—Well, I do not know how it could be done.

564. Of course, it had to be a distinctive heading?—We do not recognise a line heading. Our resolution was as follows:—"That owing to the great difficulty "of coming to any decision whatever as to the merits "of woven headings, the committee of experts have "felt themselves compelled to place all woven headings "in the second class. Printed headings having a "distinct character or design will be treated on their "individual merits as trade marks."

565. So that you did recognise printed headings?—Yes, but not woven headings, because in headings which are woven the colours come together so closely, that you can make from a pink, by going on shading and shading, a scarlet, and you can make a violet into a crimson. There are bluish violets and red violets. It was quite impossible to distinguish them.

566. (*Baron Henry de Worms.*) This is a woven heading (*producing same*)?—Yes, that is a woven heading.

567. Could *that* be registered?—No, not at all.

568. (*Earl of Crawford.*) It could be registered under the Act?—Nobody has applied for such a thing. If we begin this we shall get into confusion.

569. (*Mr. Hutton.*) The Board of Trade have not registered headings?—It never has been done, except in this one case.

570. (*Chairman.*) It is only done in conjuction with the device of butterflies?—Nobody sent headings in for registration.

571. I suppose you would not object to the registration of a distinctive heading, supposing that it were distinctive?—If it were a design I would not object to it. We have even allowed printed headings which formed a design; I mean the committee of experts have, and those have been registered.

572. Upon the present Act of 1883, what observations have you to make?—I have to make the same observations which have been made before, that if we are exposed to have open words registered, for instance, "Bramante Imperial" or "Imperial shirtings," which has been passed, and has been three weeks on the table, or "El Especial" and "Mejorado," we have worked for nothing. If such words are allowed, then the trade will have to get notice to send all the words in.

573. I should like to ask you a question of some importance. Do you think it would be possible, and give satisfaction in Manchester, if a committee of experts were formed who could be consulted by the office on questions of doubt as to similarity?—I am decidedly of opinion that if some assessors were appointed to help the Manchester Trade Mark office, it would avoid a great deal of unpleasantness and delay in London.

Mr. S. A. Fulda.
23 March 1887.

574. Would there be a difficulty or not in getting a committee consisting of individuals who would give general satisfaction. They would necessarily, I suppose, be persons in the same trade themselves?—Some of them would.

575. Do you think it would be possible to get a committee without having amongst its number those who were actually in the trade, and themselves registering, because one can conceive, if you had them, there might be a jealousy?—Well, there was not a difficulty before, I think. We had the president of the Chamber of Commerce and the vice-president as members of the committee, we had first 12 experts, then we had to increase the number to 20 or 21. Four formed a quorum. Those were our rules. They were not all in the same trade. For instance, our vice-president, who was a most able man, and who, I am sorry to say, is dead, was Mr. Crompton Potter, who was in the printing trade. He was a calico printer. He had nothing to do with what we registered. There were some bleachers also, for instance, Mr. Davis.

576. Would they have the requisite knowledge?—Yes. I should certainly have a bleacher or two, because they have a great deal of experience. I do not think there would be any jealousy. At least, there was not before.

577. Was there general satisfaction expressed by the trade with the decisions of these experts in 1879?—I believe so, because whenever I wanted anything signed, such as the petition which we sent up in 1883, I could always get the whole trade to sign it. It only depended upon how much time I had. Now, when I want anything, I speak to a few leading people, and they say you will have our full co-operation. You see it is so very difficult to work Manchester. We had to pass above 44,000 stamps, and they were nothing like the real quantity of trade marks existing, because people who knew that words were not registered did not send them in.

578. Out of those 44,000, do you know how many were appealed against?—I am told only 170 cases were appealed against. The experts put the marks into two classes, the first and second class. We reconsidered some of our decisions, before we finished, by evidence which we got, and sometimes we found a second-class mark ought to have gone into the first class, or a first-class mark ought to have gone into the second class. Sometimes we had the same marks four, five, or six times before us. Then we found some other marks, and compared them again, but the principle gone on at the time with the Registrar was that whatever we passed first he passed first, unless there was an order of the court, and if anybody wanted a second-class mark put into the first class, if he was not satisfied, he would try to get the court to do it, but the Registrar did not do it. There were very few cases against it. Amongst all those 44,000 trade marks there were only 170 cases, if that is correct. Of course, we had to go by certain lines; we could not satisfy everybody. If there were more than three, we had to put them into the second class.

579. (*Baron Henry de Worms.*) But then you had a power which does not exist now. There is no first class and second class now?—No; we had to deal with old marks only.

580. (*Chairman.*) Do you agree generally in the views which have been expressed by Mr. Bailey and Mr. Dehn?—I do, indeed.

581. Is there any other point to which you wish specially to call our attention beyond what those gentlemen have directed our attention to?—Not unless Mr. Hutton wants to ask me anything.

582. (*Mr. Hutton.*) I think I have asked you everything. My object was to know whether these experts gave satisfaction to the trade?—Yes.

583. (*Chairman.*) Do you think there would be any difficulty in finding a committee of suitable

Mr. S. A. Fulda.

23 March 1887.

experts who would inspire confidence, and who would be willing to undertake the work of accepting references for their advice in any cases of doubt?—I believe you could get it if you wanted it. The Chamber of Commerce in Manchester leads everybody. There might be some persons who would dissent, but the Chamber of Commerce is our great authority, and they have worked this thing with a great deal of trouble, and they would find suitable, impartial, and reliable persons, as they have done before.

584. (*Mr. Hutton.*) As to the working of the Manchester office. I should like to ask whether it would not be desirable that the whole of the work connected with registration, prior to the final registration, should be conducted in Manchester?—Yes; I think we are unanimous about that in Manchester.

585. That would meet the wish of all persons, and merchants generally?—Yes.

586. (*Baron Henry de Worms.*) Do you mean without reference to the London office?—Well, the final work would be done by the London office.

587. (*Mr. Hutton.*) The final registration?—Yes. It was done so when we had experts.

588. (*Baron Henry de Worms.*) Mr. Fry has his office in Manchester now, has not he?—Yes. He is keeper of the trade marks. He is under the Board of Trade.

589. The work in the Manchester office is done in this way: In the event of a trade mark being designed, we will say, that design is sent to the Manchester office to Mr. Fry?—It is not done so now. Do you propose that?

590. I want to know whether that is done. Is that the course now adopted?—No. The course adopted now is to send it to London, and it is sent from London back to Mr. Fry, who refers, and gives his opinion about it, and then it is sent back to London. Mr. Whittle will know more about that.

591. A Manchester mark is first sent to the London office and then referred to the Manchester office?—Yes.

592. It is then again referred to the London office?—Yes, I believe so; and then, if there is no objection, it is published.

593. What is the object of again referring it to the Manchester office, because all the trade marks are registered in London?—That is true enough. It is easier to refer in Manchester for Manchester trade marks than in London.

594. I take it from you that they do not refer in the first instance to Manchester?—No; Mr. Whittle can perhaps tell you that.

595. I only want to know what you propose. What do you propose as regards the Manchester office?—That the trade marks may be sent straight to Manchester, and then compared, and some of the assessors consulted, and then sent to London in the same way as they were before.

596. (*Mr. Hutton.*) That is, I suppose, if the Registrar has any difficulty in deciding. He need not consult the assessors otherwise?—Certainly; if some people were consulted it would obviate all the unpleasantness which the London office experiences, and which we have in Manchester.

597. (*Baron Henry de Worms.*) Were not instructions sent to that effect on the 1st August 1885. "For the information of the Manchester Chamber of "Commerce, the Board of Trade will direct Mr. Fry "to return to Manchester and act as he did before "1884"?—I cannot say as to that.

The witness withdrew.

Mr. J. L. Whittle.

Mr. J. Lowry Whittle called in and examined.

598. (*Chairman.*) It has been suggested that a sub-class has been made of class 24 for velveteens, and that certain designs or words have been registered in that sub-class. Is that so?—Yes. Pile goods have been treated as separate from ordinary goods.

599. As a separate class do you mean?—As a description of goods in the class.

600. What effect has a description of goods in the class?—We think it is practically a sub-class.

601. What effect has a sub-class?—I will illustrate it by class 43, where a mark which could not be registered for beer or ale could be registered for whiskey.

602. I do not find any rule making a sub-class or sub-classes in class 24?—No.

603. Has there been any such rule?—No.

604. Without a rule does not registration for anything which comes within class 24 register for everything?—It depends on the claim, whether the applicant claims all descriptions of cotton goods.

605. What authority have you to register for anything less than the whole class?—I think I can supply you with our reasons, because it has been held that where a description of goods is claimed within a class we have authority from the Commissioners of Patents to register for that particular description of goods and consider it as confined to that particular description of goods in that class.

606. Supposing a certain device was registered for velveteens, would you allow exactly the same device to be registered by somebody else for longcloth?—I do not think we could refuse it.

607. There is power by the Act for the register to be divided into classes. By section 101, "the Board "of Trade may from time to time make such general "rules, and do such things as they think expedient "* * * for classifying goods for the purposes of "designs and trade marks." Then there are certain rules made "for the purposes of trade marks registra-"tion, and of these rules goods are classified in the "manner appearing in the third schedule hereto." And the third schedule contains class 24. "Cotton "piece goods of all kinds, such as cotton shirtings, "longcloth." Have there been any other rules but those rules of 1883?—No.

608. Then what authority has there been for any other classification?—I should say it depends on the practice applied to all these cases.

609. (*Lord Macnaghten.*) Are there sub-classes in any other classes?—There are sub-classes in almost every class.

610. Would you give us an instance of it?—If your Lordship would refer to class 24, if there is a mark for coffee, it will be passed for another applicant for hops.

611. (*Chairman.*) It is not a separate classification. It says: "Substances used as foods or as ingredients for food, such as." Those are merely given as instances which come within the class, not as sub-classes. It may be that you may create sub-classes, which would be separate classes, and register for them; but I cannot understand at present how, under this classification, you could register under classes 24 or 25 different things for different matters which come within those classes?—Within the same class.

612. Yes?—I will refer your Lordship to an instance.

613. (*Lord Macnaghten.*) Has there not been instances where a person applying for registration has, under the authority of the court, disclaimed the application of the mark to certain articles in the class?—Many such cases.

614. (*Earl of Crawford.*) In that class 24 you have two entries?—Yes; "Cotton piece goods of all kinds, such as cotton shirtings, longcloth."

615. Do you call both those sub-classes?—No.

616. Then I do not see that you have any single sub-class anywhere, because the words "such as," which you claim to read as making sub-classes, does not apply in those cases where you say it does?—I

Mr. J. L. Whittle.

23 March 1887

do not depend upon this illustration of the class at all.

617. That is no authority then?—It is a guide to the public, but we do not depend upon it as a justification.

618. Is your sub-class a private arrangement belonging to the office, and not shown to the public?—It is founded on our trade knowledge, as far as we have been able to ascertain it.

319. Do you assume that the Patent Office has power to make a new class whenever it likes?—Not a new class; a description of goods.

620. (*Chairman.*) If you register for it, and it alone, how does it become a sub-class? It becomes a different class, having all the effects of a different class?—Yes.

621. Therefore you register something as for a class which is not amongst the classes that have been created or authorised by the rules of the Board of Trade?—That is a matter which I should like permission to go into the history of. We have got it from the Commissioners of Patents. With reference to class 13, "Metal goods not included in other classes," that includes needles, and it includes anvils, and the Commissioners of Patents directed us that if we had a mark registered for anvils we should not consider it as preventing registration of a mark to be applied for to needles.

622. That was before 1883?—Yes.

623. It is a survival of the practice which existed before 1883?—Yes.

624. The Commissioners of Patents at that time directed this classification. They have ceased to exist now, and the classification is only directed by the rules made by the Board of Trade?—Yes, that is so.

625. (*Mr. Hutton.*) How do you distinguish between cut velveteen and uncut velveteen?—We do not see the goods.

626. Having put velveteen in a sub-class, how would you put uncut velveteen?—I should say that would go into the same class. We should ask them to describe it as pile goods, and if they described it as pile goods we should take them off on such information as the Comptroller had.

627. Corduroys would come under the sub-class?—Yes, pile goods. I think the question as to corduroys has been recently raised, and the Comptroller is holding the question over for further consideration. The impression was that they would come under pile goods.

Adjourned to Saturday next at 11 o'clock.

Board of Trade, Whitehall.

Saturday, March 26th, 1887.

PRESENT:

LORD HERSCHELL.	BARON HENRY DE WORMS, M.P.
THE EARL OF CRAWFORD.	THE RIGHT HON. A. J. MUNDELLA, M.P.
LORD MACNAGHTEN.	JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. CHARLES BAILEY, re-called, further examined.

Mr. C. Bailey

26 March 1887

628. (*Chairman.*) Before going to the next head of objection which you made to the working of the Act, have you some other illustrations of the former part of the case?—Yes, I have three cases to put in under the second objection. It illustrates the point that the London office passes marks which are calculated to deceive. I put in No. 24,391 (*producing same*), which represents an Indian with a hoop in his hand and a couple of tigers jumping through it or about to jump through it. A new applicant sends in a second stamp, which is No. 53,419; the office accepts it without any reference to 24,391. The difference between those two consists in the fact that there is but one tiger, or I suppose it would be a cheetah rather than a tiger in the second mark, but the outline is the outline of a tiger, and he also has a hoop, but I think there are two men instead of one; there is a man in the background. There is no qualifying name to that mark, but in the first one it is distinctly called a "performing tiger," and the term "performing tiger" is registered along with the original mark. Now, it is not as if the second man had put in the words "performing tiger" when the first man had omitted them, but the first man has not only got the mark, but he has got the description of the mark. It is the converse of the case of the sitting hen that I alluded to in my last examination, where the hen is a common object, but the applicant obtained registration by calling it "the "sitting hen."

629. You say this would properly be called either a performing tiger or performing cheetah, and it is so near to the other as to convey the same idea?—That is so. I have seen the first mark reduced to colour, and they are so very like in all their parts that even a cultivated man might be quite expected to make a mistake in distinguishing the two. Now, had that mark been submitted to the body of experts who classified the marks under the Act of 1875, they would unhesitatingly have thrown out the second mark.

630. (*Baron Henry de Worms.*) Is the second mark registered?—The second mark has been registered, and there is an arrangement come to between the two firms who respectively registered it. They met one another in a very honourable way, and the arrangement was amicably made between them as to the markets in which each of them would use their respective marks.

631. (*Mr. Hutton.*) There is nothing marked on it "with consent"?—It may have been done later, or you have not got the mark that has been exhibited to the public.

632. (*Chairman.*) It was accepted without any communication with No. 24,391?—That is my point, that they have no business to pass a mark that is calculated to deceive without reference to the original owner.

633. (*Baron Henry de Worms.*) Then I take it your objection would be to the performing animal, the

Mr. C. Bailey.

26 March 1887

animal doing the same thing or about to do the same thing as in the first mark?—Yes, the idea of the two marks is identical. The method of expressing that idea varies slightly. An uncultivated man has no power of distinguishing those differences; a cultivated man sees differences, but even with the cultivated man, six months afterwards, the differences would not be remembered, and therefore the registration of the second mark is a fraud upon the owner of the first.

634. Supposing instead of a tiger it were a dog, would you say that the act of jumping through a hoop would render it so far similar to that of a tiger jumping through a hoop that it ought not to be registered?—If I were the registrar and saw that there was a similarity of outline in the two stamps referred to, I should take it to be my duty in that case to refer the second applicant to the first owner.

635. (*Chairman.*) I suppose that would depend upon the size of the dog; if it were a King Charles, jumping through a tiny hoop, you would not imagine that that would convey the same idea?—A great deal would depend on the outline.

636. (*Baron Henry de Worms.*) That goes a very long way, because that would practically preclude them from registering any animal jumping through a hoop?—If the act of jumping through a hoop is the distinctive feature in the mark, and in virtue of which it is registered, I think the contention would be right that it ought to be referred to the original owner.

637. Does not it come under the category of those cases which Lord Herschell alluded to the other day, that virtually if you so limit the number of trade marks, the registration becomes a matter of impossibility?—The answer to that would be that when two firms are brought in relation one with the other, and one is wanting to register that which clashes with the first, it is a common practice amongst the Manchester merchants to arrange the details of their marks so that they will not clash. In other words, if the London office were to do that which we in Manchester have constantly asked them to do, namely, allow the merchants to come in relation one with the other through the office there would be no difficulty whatever in arranging a very large number of marks that at present the office is obliged to refuse even with its present lax administration.

638. (*Chairman.*) Is there any other illustration of the first part?—Yes; that is, the performing tigers. The next illustrates a very important class of illustrations in the Manchester trade. It is the three rifles, No. 16,814, an old stamp, in use for many years. It consists of three upright rifles stacked. It is a good mark, because nothing would clash with it except rifles. The mark has all the elements of a first class mark in it in consequence of its clearness of outline. I next put in No. 50,182, which consists again of a stack of three rifles with a shield overlapping. The shield is a common object, it has been used largely in the Manchester trade.

639. In Class B.?—It is thrown into Class B. But the applicant of No. 50,182, probably from seeing the practice of the London office of allowing a first class mark to be added to a second class mark, and noticing that the office passes such marks as good marks, has taken up the idea of the three rifles, and in order to secure that he adds a common element. Now, from the union of that common element with a first class mark belonging to another house, inequity is produced. It is a wrong state of things that a second applicant should be allowed to appropriate a first class mark.

640. (*Mr. Hutton.*) In that case was there any reference made?—The office was written to in reference to the admission of this mark which we found on the tables. My firm is the owner of one rifle. The owner of 16,814 is the owner of three rifles. We have a working arrangement with the owner of 16,814 by which we use one and two rifles on certain classes of goods for certain markets, and we allow to the owner of 16,814 the right of using three rifles in certain other markets. We have no wish to rob each other of the advantage we possess in having a registered mark. For that reason we have come to a working arrangement by which we each respec the other's rights and take the advantage of the marks. Now the London office refused to admit the cogency of the contentions that the owner of 16,814 and the owner of the one rifle made to the office. They refused to see the right of either party to prevent the registration of 50,182. The owner of the one rifle and the owner of the three rifles jointly agreed that they would oppose the registration of 50,182 in order to make it a test case. When the facts were brought under the notice of 50,182, prior to that opposition being proceeded with, the owner of 50,182 at once saw the reasonableness of our objection and said that he did not know that we had three rifles on the register, and in view of the similarity to the mark already registered it was not his duty to proceed with the registration. He therefore withdrew the mark, which accomplished the end for which we entered notice of opposition.

641. (*Earl of Crawford.*) Although the Registrar had practically consented to let him have it?—Not only consented to let him have it but refused to admit the cogency of the Manchester arguments against the admission of the mark to registration.

642. (*Mr. Hutton.*) You did not appeal even to the Board of Trade; you simply appealed to the owner?—We first of all took our right of opposition under the Act.

643. (*Chairman.*) You opposed it before the Registrar?—We were intending to oppose it before the Registrar.

644. You called his attention to it?—Yes. The first stage would be to lodge a notice of opposition. We had nearly got up to that stage when the second applicant, 50,182, withdrew it, and so saved the necessity of following it up. This illustrates, then, the point that the Board of Trade passes marks which ought not to be passed, in the light of the practical knowledge of Manchester merchants, and is on all fours with the instance of the performing tigers just submitted to your Lordship. As belonging to this part of the case, that is the union of a first class mark and a second class mark by a new applicant; there is an abundant series of such illustrations in the Manchester trade passed by the London office. It is so important that, with your Lordship's permission, I will illustrate it in another form. This is the case of the dogs and the scorpion; the number of that mark is 52,890. It consists of two dogs, the dogs being the most prominent feature in the object. The dogs are classed in the B. list by the Manchester experts. Almost every house has shipped goods bearing one, two, three, or four dogs in combination. The dominant idea of that mark is the two dogs. Immediately under the two dogs you will find a small object; it is a scorpion. Now on the cloth that I submitted to you at our last meeting that scorpion would as likely as not come out very indistinctly. If it were a coarse open cloth it would be extremely difficult to know that there was a scorpion on the cloth.

645. It might look like the shading of the ground?—It might look like the shading of the ground. That scorpion is a first class mark. I need not quote it. It is sufficient to know that it is on the register. Knowing that this mark was being applied for, and knowing the practice of the office of admitting to registration common and first class marks combined, my firm wrote to the Registrar to complain in case he passed the mark for registration. The Registrar did not pass that mark for registration, probably because of the notice that we had sent him objecting to it. We refused to allow it to come upon the table until our rights had been satisfied and the applicants asked us therefore whether we would allow the scorpion to come on. We at once gave our consent. Had it been a firm whose standing was not of a high order we should naturally object to our mark being appropriated by another owner. That illustrates a long series of marks that the office is passing to the great detriment of old owners. They will receive common objects that are

universal in the trade and combine with them the first class object of some other firm; or they will take the private object of some other firm and combine with it some common element, as in the case of the three rifles and the shield. The Manchester Chamber of Commerce emphatically protests against this as an interference with the rights of old owners. These we could multiply not by the score nor by the hundred, but I believe into the thousands, so constant is it the practice of the London office to accept them.

646. (*Baron Henry de Worms.*) Which mark would that clash with, the scorpion mark?—The main idea is the dog. The dog is the common object: but the scorpion is a first class mark.

647. (*Mr. Mundella.*) A scorpion alone is a first class mark?—Yes.

648. Do you consider that a dog and scorpion is at all an infringement upon a scorpion pure and simple?—I think it is a very clear infringement.

649. (*Mr. Hutton.*) They would not give registration to it without the scorpion?—Undoubtedly they could not. There are hundreds of dogs. A man puts in an element one twentieth or less of the area of the stamp, and in virtue of that element he does two things: He first of all appropriates an object belonging to another and already registered, and he secures the registration of a common object as if it were his own.

650. (*Mr. Mundella.*) If the dog is registered alone without the scorpion that would be an infringement of somebody else's mark?—It could not be registered. There are too many.

651. But in combination with a scorpion it can be registered?—And has been registered.

652. I do not understand you to complain that that combination makes it an infringement upon anybody's mark, does it?—I complain of it as an appropriation of a first class mark, in virtue of which they are able to get on the register.

653. The scorpion is the first class mark?—The scorpion is the first class mark.

654. (*Chairman.*) Of course the dogs they could not claim, they could only do it by putting in the scorpion. You say if the dogs are still the dominant idea then it is not registrable; if they were to make the scorpion the leading idea of it, although there might be dogs there, then they would be infringing somebody else's mark?—Yes.

655. And therefore in neither view could they register the dogs and scorpion properly as a mark?—In my opinion, as a practical man, that mark ought to have been treated in this form. The applicant should have been required to endorse the mark stating that he had no right to the two dogs. He should be distinctly required to disclaim any exclusive right to that which is common property; and in the second place he should endorse on his stamp the fact that he has obtained the assent of the owner of a scorpion in order to get it on the register.

656. I quite understand your first point, which seems to me a very important one. Taking dogs to be a common mark, yet, if before any bicycle was registered at all, you were to have a dog riding on a bicycle you would not say that that was a mark which could not be registered because the leading idea would be the bicycle with the animal on it?—Quite so. You quite apprehend the point of a trade mark.

657. You say if anybody had the design already then you could not by merely putting a common object upon it properly obtain registration?—I will put in the bicycle directly and then we can discuss that point. It is the dominant idea of the mark.

658. (*Earl of Crawford.*) The prominent object there being the dog, *ipso facto*, it is in Class B. and therefore not registerable?—But not so stated by the Registrar.

659. I am taking your view. I want to see whether I am quite right in my idea of what you said. It is now, or might be, with the addition of a scorpion, allowed. Supposing that scorpion had been an antediluvian one of gigantic size and pursuing a small dog, what would your view have been then?—It would clash with the scorpion.

660. (*Chairman.*) That would have been a different objection?—A different objection on a different ground.

661. (*Earl of Crawford.*) I understand you objected at first to the appropriation of the scorpion as being your property?—On the ground that it would make the dogs a first class mark, in addition to my own objection to the scorpion.

662. You have the infringement of your own scorpion, and in addition to that it was making Class B. really in Class A.?—That is so. The fact was that the Registrar at that date was passing so many second class marks with the addition of other second class marks or first class marks, that I made it a point of intending to oppose this particular registration.

663. (*Mr. Mundella.*) The real object, as I understand, of a trade mark is to have something distinctive, that is not at all imitative of any other trade mark, that is, not a colourable imitation, and that cannot be mistaken in connexion with any other mark. Surely two dogs, and very wide awake as they appear, on the alert, and in a state of alarm at an approaching scorpion, is a very different thing to dogs in a quiescent state. There is nothing colourable there as an imitation of anybody's mark. Surely there is no harm in a scorpion and dogs being brought into the same picture on the same mark, and there is no danger of that mark being confused with this mark, with the scorpion alone?—I think there is a strong danger, because the object is distinctly a scorpion, and that scorpion is a first class object, the dogs are not.

664. (*Chairman.*) Your objection seems rather inconsistent. I quite understand your point that there the dominant idea is the dogs, and anybody looking at that would be disposed to go with you, and not think about the scorpion at all?—It is with that object I put the mark in.

665. I think it is rather inconsistent with that to say that the scorpion is so prominent that everybody would notice the scorpion and therefore treat it as your mark?—I use it as an illustration.

666. (*Lord Macnaghten.*)—Supposing people knew dogs were a common mark and so disregarded it?—That would not alter it.

667. (*Chairman.*) I think you rather weaken your point by calling attention to the fact as to the scorpion?—I only do it to illustrate a very long series of such objects. In this particular instance the scorpion is an insignificant part of the mark. But supposing that that scorpion had been introduced into the two dogs mark of the same size as the two dogs.

668. Then it is a different case. Then you say he is taking a scorpion mark; the scorpion is the dominant idea and he cannot say that that is not an infringement because he has put in some dogs or a cat or anything else?—Quite so.

669. (*Baron Henry de Worms.*) You say that dogs are a common object. Supposing one of those dogs was hunting a rat, would you say that was a bad mark?—I should, because the rat is already registered as a first class mark.

670. Then it comes to this, which is exactly what Lord Herschell said the other day, that if any mark exists it never can be used, not only alone but in combination with another mark?—It all depends whether it is a dominant object, of course.

671. (*Mr. Mundella.*) Supposing it were a dog with a kettle tied to its tail?—That would be a good mark.

672. (*Baron Henry de Worms.*) Supposing a kettle were registered?—It is registered. We are the owners of a kettle.

673. (*Chairman.*) It depends very much on how you bring them in combination. You may bring two registered objects in combination in such a way as to suggest an idea that would not be suggested by either of the two alone?—Yes.

Mr. C. Bailey.

26 March 1887.

674. If you had, for example, a dog on its hind legs playing a double bass as big as itself you would probably say that that, if not registered, would be a good mark although you have a fiddle and a dog registered?—Yes. Had I known this particular point was to be discussed as to the right of the new applicant I would have selected a different instance. I simply select this as illustrating the long series of cases we have against the office where, by the addition of a first class object to a second class object, an applicant is able to obtain registration.

675. It would not matter, for the purpose of your argument whether that scorpion had ever been registered or not?—Quite so.

676. Your main point upon that would be exactly the same if the scorpion had not been registered before?—Yes. You see it is on all fours with the rifles, which is a first class mark, and the shield of Lancaster, which is a second class mark.

677. (*Mr. Mundella.*) Do you think that the close approximation of marks is due to the poverty of invention of the persons using them or is it due to a desire to copy somebody else's mark and to get near to it?—I explained that in the evidence I gave on Wednesday last. There are two classes of merchants: the larger class is an honourable class who would do everything they could to steer away from an already existing mark.

678. To get as far off as possible?—To get as far off as possible, on the ground that such merchants would like to create a name of their own for their own goods and not trade on the repute of the other merchant who had goods bearing a similar mark. On the other hand, there is a group of merchants who are not as particular in steering clear of their neighbours, and who would like to profit by the reputation of other people.

679. (*Chairman.*) According to your view the larger class would rather have their mark refused than registered, if it were really not a distinctive mark, but, something resembling what had previously been registered?—Yes.

680. It is not only the person formerly registered who suffers, but also the person who receives the new registration, as if it were new when it really was not?—That is so. In the very large majority of cases the second applicant does not know of the already existing mark which is registered.

681. (*Mr. Hutton.*) May I quote an extract from a letter addressed in June 1882 to the Chamber of Commerce. It is relative to the objects common to the trade combined with or without some private object. "It seems to the Commissioners that this description of trade mark is divided into three classes: 1st, "those consisting entirely of common stamps; 2nd, "those consisting partly of common and partly of "private stamps; and, 3rd, those consisting entirely of "private stamps." These come under the second class. "It appears to the Commissioners undesirable to accept "such marks as new marks in view of the great "inconvenience which the registration of those marks "would cause to the bleachers. Moreover, as the owners "of such combinations would have to disclaim all "right to the exclusive use of the common parts, the "registration would in reality only cover the private "portion which could be equally protected by separate "registration"?—Those are the instructions of the Commissioners of Patents, and are sound.

682. (*Mr. Mundella.*) What you want is that the Board of Trade should insist, where there is any resemblance, any approximation between the two marks, on the new mark keeping as far away as possible from the old one?—That is so.

683. And, in fact, that they should reject great numbers of the marks that are presented to them?—That is exactly the Manchester contention.

684. You in Manchester have a very different custom to that which prevails in any other department of trade?—Yes.

685. That is, you want to have your own trade mark upon everything which you send out, as, I understand, from your previous evidence, Ralli Brothers put their own trade mark on everything they send out?—Yes.

686. And then you put your customer's mark on as well?—The customer has no mark; it is Ralli Brothers' mark still.

687. You put a separate mark for different customers?—Not always; in certain instances we do.

688. You have hundreds of marks?—Thousands.

689. I think you will admit that if you Manchester merchants had had the courage to stick to your one trade mark for everything you sent out, for one house, and nothing more, which would have been the right thing to do, it would have made the success of your trade, and house, and reputation. If you had stated to your customers, "We have but one trade mark; if "you buy our goods you must buy them with that "trade mark;" if you had done that, as is customary now with some of the greatest manufacturers in the world, there would have been very little difficulty at all in this question. It is your having thousands of marks in your house so as to accommodate every customer which has made the work of the Board of Trade so difficult. Is not this the way to meet this difficulty: must not there be a little give and take on your part, and some attempt on the part of the Manchester Chamber of Commerce to help the Board of Trade, and not to be hypercritical and to find fault with them at every turn?—I submit that the Manchester Chamber of Commerce has never been hypercritical in the case of trade marks.

690. I do not say you have, but is not it right that you should not be hypercritical; that you should help the Board of Trade?—What I submit is this, that there is a practice which has existed for scores of years in the Manchester trade to use trade marks in the way in which it has been put in evidence they are used. That is the state of fact, not the state of what might be desirable, or what would have been best to have been done. The fact is it is there. So far from the Manchester Chamber of Commerce having been hypercritical in this matter they have shown from the very first a desire to facilitate whatever it was possible to facilitate with the Board of Trade, but the Board of Trade has persistently opposed their representations which they have made from time to time.

691. Surely the officials of the Board of Trade are as anxious to meet the wishes of the Manchester Chamber of Commerce as the Manchester Chamber of Commerce is wishful to meet the wishes of the Board of Trade?—But the cases that we have put in before this Committee show that they are not so anxious.

692. (*Chairman.*) It does not follow that they are not anxious to meet the views of the Manchester Chamber of Commerce. They take a view of their duty, which prevents their meeting your views?—That is granted; and we, as practical men, want to convince the Board of Trade that there is not only reason but good sense in the views that we take in Manchester.

693. You say that, dealing with this question of registration of trade marks as it affects Manchester, if you are to carry it out at all it would be best carried out, if possible, so as to harmonise with the course of trade there?—That is so.

694. And you suggest that that might be done without any substantial difficulty if a somewhat different view were taken?—That is so. We are ready to do that, and have always been ready to do that.

695. (*Mr. Mundella.*) That being so, how do you think this friction can best be got over, because I think you must admit that with an Imperial register you cannot claim for Manchester that it should have a separate registry of its own?—Mr. Chamberlain almost went as far as to say that we had established a very good right to have a separate registry of our

own where we understand our marks, and where we are not fettered by the restrictions that the courts have put upon other trades which do not touch us.

696. (*Chairman.*) There are some other places that ship in the same way. You could not have a Manchester system and a Glasgow system?—The Glasgow merchants would, I have no doubt be quite ready to send their marks to Manchester for registration as the proper centre.

697. (*Mr. Mundella.*) It is quite true, I suppose, that the staple of your shipments from Manchester are Lancashire textile goods?—That is so.

698. But in addition to that Manchester does business in every other kind of textile as well as Lancashire textiles?—It is so.

699. I suppose you ship lace?—No. There are shipments of lace, of course.

700. Large numbers of you ship lace. You would ship musquito nets; you would ship cottons; you would ship hosiery; you would ship Bradford goods. Is not that so?—Perfectly.

701. In your house, when goods were sent to one of your customers abroad, you would put your own trade mark upon them?—Suppose you were shipping quantities of musquito nets, you would put your own trade marks upon them, would not you?—As merchants, certainly.

702. If you put your own Manchester goods trade mark upon Nottingham goods, as you would do, and the Nottingham houses registered in London, you may have at once confusion. You might buy your goods of the producer in Nottingham. It is a very common thing to my own knowledge. You would say: "We "want you to make these goods up with our own trade "mark," and the Nottingham house would be very willing to do so. But there might be another Nottingham house who had a trade mark closely resembling yours, who made nothing but lace; and when they got to the Indian market it might be said: "Messrs. Ralli have practically copied the other trade mark, or are close to it" simply because you have confusion in the registry?—There could be no confusion in the registry, because classes 23, 24, and 25 are cotton goods, and if those three classes were kept in Manchester, as the common receptacle for the trade of the whole country in those classes, it is manifest that a piece of lace could not have a mark different from the mark that is already appropriated to the merchant in class 25.

703. (*Chairman.*) In what class is lace?—I should think it would come in the 25th class.

704. (*Mr. Mundella.*) I speak of nets and not lace at all.

I should think it would come in class 25, but I have no experience.

705. (*Chairman.*) Not in class 24?—Class 24 consists of cotton piece goods.

706. As the law at present stands there is nothing to prevent people registering identical marks in two different classes?—Nothing whatever. It is done in dozens of cases. Cotton lace is really in class 25, and therefore the scorpion, which is registered in class 24, has no right to be put upon goods belonging to class 25.

707. (*Mr. Mundella.*) There is a difference between cotton lace and piece goods made in the lace trade, the musquito curtain, and so on. There are articles made for the lace trade that are used for clothing?—Yes. Still we ask that the cotton classes should be adjusted in Manchester as the natural centre. We have, I suppose, in Manchester—actually resident in Manchester, or firms in Manchester representing firms in other parts of the country—I should think, nine tenths of all the marks in classes 23, 24, and 25. I should think nine tenths of them would come through Manchester firms.

708. You have now a gentleman in Manchester who represents the Board of Trade. Can you not in conference with that gentleman arrive at an understanding as to what should, in your opinion, be registered and what should not?—We have asked for that, and cannot get it.

709. I am simply leading up to the point where I think there may come in a difficulty between you and the Registrar where he must give a final judgment; but surely in 999 cases out of a thousand you can come to some agreement?—Were the representative of the Board of Trade in Manchester allowed to do what the Duke of Richmond directed him to do, three fourths of the friction that now exists between the Manchester merchants and the Board of Trade would cease; and it is because the London office over-rides decisions of the Board of Trade officer in Manchester that the friction is brought about. The friction comes from the Board of Trade, not from the merchants in Manchester.

710. The sense in which they over-ride the decision is in allowing two marks to be registered nearly alike, not in refusing too many but in accepting too many?—That would come under the second head of my objection to the practice of the London office. In reference to the first head I pointed out a number of things where the London office have been accepting for registration that which the trade say is incapable of registration.

711. (*Chairman.*) The point is this, that for the purposes of many of the markets in which goods are dealt with which are registered under various parts of the Act in various classes, the view taken by the Board of Trade would be sufficient, because they do not so nearly resemble as to be calculated to deceive. There are differences which would be obvious to the people dealing with them. But you say that the usage of the Manchester trade in shipping to these foreign markets, and the ideas which trade marks generate there, require a different treatment, and that even, although looking at the two marks side by side, critically, you might well say they do not nearly resemble one another, yet if you look at them in relation to the object for which they are used by the custom of the trade they would be calculated to deceive, because the dominant or leading idea, the impression left on the mind, would be the same?—That is the exact position taken up by Manchester. I shall come to the point which Mr. Mundella has raised in my fifth heading.

712. (*Baron Henry de Worms.*) One question about these dogs. You object to this mark because dogs are a common mark, and the scorpion is a registered mark. You say that the combination of the two is detrimental to the scorpion mark?—I put it in as an illustration of that type of registration by which a first class object belonging to another firm when added to a common mark belonging to a dozen firms is made a reason for the second applicant receiving a registrable mark from the Board of Trade.

713. The dog is a common mark. Are you aware that a dog is registered scratching himself, presumably there is a flea. The flea is not seen. That is a good mark. It is as to some dog soap?—It is not in Class 24.

714. Would you object to the registration of a dog scratching himself?—Supposing that the dog had not been used as a common object in all sorts of ways on Manchester cotton goods, then undoubtedly that would be a first class mark. I would not go so far as to say that a dog could not be so drawn as to be unlike any other dog in the trade, which would warrant the office in passing such a mark as a good mark for registration.

715. (*Chairman.*) A dog dancing on a tight rope, for instance?—Provided the rope is a very distinct thing, and that the dog is dancing.

716. (*Baron Henry de Worms.*) I take the case of the flea because you do not see the flea?—You see the peculiar attitude of the dog, which is unlike the attitude, probably, of any other dog on the register.

717. (*Mr. Mundella.*) Suppose the scorpion had attached himself to the dog's tail; would not that be

Mr. C. Bailey.

16 March 1887.

a good mark, and would it be an infringement of anybody else's mark?—The line I take is that as the dog is a common object, and the second applicant receives registration in virtue of the addition of the first class object, the owner of the first class object ought to have a right of objecting.

718. (*Chairman.*) I have seen all your other points, but I cannot see how it makes any difference whether the addition to the common object, which on the hypothesis is so insignificant, is a first class mark or something else?—In the particular case submitted to you of the dog and the scorpion undoubtedly the scorpion is a very insignificant part of the mark; but it is in virtue of that insignificant part of it that the applicant gets on the register.

719. (*Mr. Mundella.*) You really will not have sufficient objects to supply your thousands of marks in Manchester?—That is the common opinion in the Trade Marks office, but I do not hesitate to say, as one who has designed thousands of marks, that I would find thousands of marks also that are capable of registration under my own definition of what a good trade mark should be.

720. I think we should all agree with you that the duty of a Registrar is to take care that the parties registering new marks should keep as far as possible apart from the trade marks in existence; and I think you should come to an understanding in Manchester as to the best way of accomplishing this?—Then I have one other illustration under the second head: that is to say, that the Board of Trade receives marks which are calculated to deceive by reason of their great resemblance to marks already on the register. With that view I submit the velocipede. That is a common object. It is an ordinary man on a bicycle. It is a common object, because there are several users of it. *That* is the same owner. *This* is a different owner. *That*, again, is different. It is common in virtue of there being more than three on the register *That* is the mark, 54,034, that I referred to in Wednesday's evidence, in which you have to look for a long time before you see that there is really a rope on the mark; and you only know that it is a rope in consequence of the very hazy outline of the trees that are put at the base of the mark.

721. (*Mr. Mundella.*) It might be a road?—It might be a road or a tram-line. *That* mark was put upon the register to the detriment of the owner of *this* mark, and was accepted by the Registrar without any disclaimer. I think that is a very striking illustration of the fact that I have peen putting before you this morning, of a second class object being registered with an insignificant detail which makes it a first class mark. By the registration of *that* mark I contend my firm has been wronged by *this* having an advantage given to it that we cannot get ourselves.

722. (*Mr. Hutton.*) Did you have any application made to you to consent?—None whatever.

723. What is the date of that?—It would be 1873. The last one is 1886. That is a wrong done to the Manchester trade, the admission of a mark of that kind. Very likely, if the owner of that 54,034 had applied to us for permission to use the bicycle, and we had known that the bicycle was not going into markets to which we were sending goods stamped with a bicycle, the probability is that we would have allowed registration to have taken place; but we ask that we should be put into relation one with the other by the Board of Trade, and not that our rights should be ignored: the other marks on the register of bicycles, 38,096, 42,599, and 52,872, I, as a practical man, would pass as good objects capable of registration, and that, I think, would meet the objection which Mr. Mundella was raising.

724. (*Mr. Mundella.*) As not interfering with this?—Yes.

725. (*Chairman.*) The idea is not the bicycle itself, but the animal?—Yes. That furnishes the evidenee that I could not give the Committee on Wednesday through the absence of the marks. That brings me now to the fourth heading of my evidence, namely, the tendency of this practice of the London office to promote litigation. The football mark you have already had submitted in another form. It is the mark 37,731, which is an old mark, while 46,920 was a mark very similar to it. It was the Burmese football match as opposed to the Japanese football match. The owner of 37,731 was put to an expenditure of 55*l.* in order to defend his right of keeping that particular football match upon the register. Here is a a case of what we call the "Seven boys" mark, which very well illustrates the laxity of the office, and the tendency it has to produce litigation. *That* is a mark which is called "The twins," but you can turn it into about five boys (*explaining*). That is already on the register. It is 31,710. Exactly the same mark, or nearly the same mark, is applied for by 35,516. The centre is almost the same as the original mark, but in addition there is a border consisting of four pairs of twins. This was put upon the register without any reference to 31,710, and, in my judgment, is an infringement of the right already granted to 31,710. If you can disassociate the idea of colour you have the same mark. I could colour this mark in such a form as to be like that, and the one object to be mistaken for the other. Then 42,428 comes upon the register. There are probably seven or eight similar bodies, but we have no objection to make to that because apparently consent was asked for, which was right. Then 49,903 is applied for, and permission is granted by the Registrar to put it upon the register. No reference is made to the three previous ones, although in principle it is identical with the other marks. If it were right to admit 42,428, then undoubtedly 42,428 should have had something to say to 49,903. When the applicant for 49,903 had his attention directed to the fact that there were other marks on the register similar to the one that he applied for he at once said, "I withdraw my "mark. It is too like those already on the register," and he served the Manchester office with notice accordingly that he withdrew his mark. To his great surprise the London office sends him word that they have already advertised the acceptance of mark 49,903, and are prepared to complete registration. That practice undoubtedly is promotive of litigation. He wants to do what is right and yet the office, in spite of the withdrawal of the owner of 49,903, almost forces him to register. It is so palpable a case of wrong registration that the office in the end withdraws the mark at the request of the applicant. You would have thought that that would have ended the story of the seven boys, but, on the contrary, 51,846 is applied for and is registered.

726. (*Mr. Hutton.*) Without a word?—Without a word. The elements of 51,846 are undoubtedly the elements of 49,903. There is no consent marked on it. It is passed by the Registrar for registration.

727. Would there be any evidence to show whether the Manchester office was in fault then; whether the Manchester office called attention to this?—The Manchester office would call attention to every one of the marks that I have already presented to the Committee.

728. They did do so?—They did do so. Every one of those was on the application form submitted to the Manchester office from London.

729. So that in spite of the Manchester office calling the attention of the London office to it the London office registered?—We say the London office shoots over the head of the Manchester representative of the Board of Trade, and by this practice brings firms most likely into collision one with the other, whereas if the Manchester officer were directed to do as the Duke of Richmond gave him instructions to do all this danger would be at an end.

730. (*Chairman.*) Is there anything else under this head?—I could multiply that *ad lib.* There are abundant illustrations of this. I perhaps ought to say here that if I had the right to go into the Trade Marks office to unearth the sort of cases of which I have merely been giving types I daresay I might find

scores and scores of illustrations. These are only illustrations that have been brought to the notice of the Manchester Chamber of Commerce, or to members of the Committee on Trade Marks of that Chamber, of wrong being done by the office in London, and the tendency of this procedure undoubtedly is to bring firms into litigation. I now come to my fifth head of evidence, the persistency with which the preliminaries of registration are retained in the hands of the London office in spite of the specific instructions of the Duke of Richmond to the contrary, as contained in a letter to the Manchester Chamber of Commerce dated the 1st of August 1885. The letter of his Grace is published, I think, in the Report for 1885. If your Lordship will look at the foot of page 55 in the letter of Mr. Calcraft it is said that "Mr. Fry will "in addition be instructed to inquire into all questions "of conflicting marks and report to the Comptroller, "who, as heretofore, must decide all questions as to "similarity of marks, or legal questions arising out "of their use."

731. Stopping there, that has been done, has it not?—We submit that it has not.

732. Mr. Fry went back to Manchester?—Yes, but he has not done that which it is said here he would do, that is, inquire into all questions of conflicting marks.

733. I thought you said he had done that, and reported to the Board of Trade in London, only they overruled the view he took?—That is so. You see what the meaning of this "inquiring into" means. It says: "Mr. Fry will also be instructed that when-"ever he finds that a mark applied for in London "and sent to him at Manchester for examination "resembles a mark already registered, he should "ascertain whether the owner of such registered "mark is willing to consent to the proposed regis-"tration. He should seek to obtain and transmit to "the Comptroller such consent in writing, and also "to report any other circumstances which he con-"siders ought to be made known to the Comptroller "before he decides whether the application should be "accepted or refused."

734. You suggest that that ought to be done by Mr. Fry if the two appear to him to conflict, before he sends up to the Board of Trade his opinion on the case?—That is so. We in Manchester regard Mr. Fry's knowledge of trade marks as infinitely greater than that of the Board of Trade upon Manchester marks. There may be questions of law which it is right that the Registrar and the Comptroller should retain in their own hands, but on questions of resemblance Mr. Fry's judgment has always been found to be satisfactory to Manchester merchants. He, in many cases, by his presence on the Exchange, by his going in and out of the various offices of merchants, and by his personal influence amongst them, will do the very thing that Mr. Mundella a little while ago asked should be done in Manchester.

735. (*Mr. Hutton.*) If he has authority to do it?—If he has the authority of the Board of Trade. But this is the difficulty. A merchant applies for the registration of a mark. Mr. Fry acts upon the instructions given in this letter to Mr. Hutton, the then president of the Manchester Chamber of Commerce; and the applicant finding that certain marks conflict with his own, sees the owners of those earlier marks, and obtains their consent. These consents are sent up to London by Mr. Fry, and they come before the Board of Trade in London. The Board of Trade seem almost to ignore the work that Mr. Fry has done in obtaining these consents, because in certain instances we have known them to travel outside the degree of similarity and ask for assents to be obtained that are very much farther apart from the mark as compared with those which Mr. Fry had obtained in Manchester.

736. (*Chairman*). You gave us some illustrations of that?—That undoubtedly brings the Board of Trade into disrepute in our district. On the other hand, by the method which the Board of Trade adopts in London of requiring the personal attendance of the applicant in London, we are put to the great disadvantage of having to come up to London to settle a matter which could be settled in five minutes if we might be allowed to do it on the spot under the supervision of the agent of the Board of Trade in Manchester. Not only that. It is not always the best that the applicant should be allowed to tell his own story to the office in London. If the applicant is a clever pleader, and if he knows something of the idiosyncracies of the officer in London he can make statements to that officer which would induce the officer to accept the mark as a good mark, whereas the old owner who is already on the register has no chance of hearing what these statements are, and he only discovers that he has been put wholly on one side by seeing the new mark when it is put upon the table. Now we hold that it would be a fair course in such a circumstance as that, that both parties should be heard by the officer of the Board of Trade, and not that the new applicant should be the only one that should tell his story.

737. (*Mr. Mundella.*) Do not you think it would be practicable instead of requiring the attendance of the applicant in London that the business should be done by the representative of the Board of Trade in Manchester direct with the Registrar in London, and that the applicant should receive the notification of the Board of Trade as to the result; and that the representations made to the Registrar should be made by their own officer and not by the applicant?—We are perfectly willing that that should be the case, if the representations are properly made by the Manchester officer.

738. (*Chairman.*) According to your account you would be prepared to trust him?—We would rather trust the judgment of Mr. Fry on a question of similarity than we would trust the judgment of the Registrar and Comptroller in London.

739. But beyond that, if the representations had to be made to the Comptroller, would you be content that they should go through the Manchester office, instead of the applicant being in direct communication with the Comptroller in London?—Personally not; but this is what would be involved: that in that case everything would have to be reduced to writing. Now a Manchester merchant cannot afford to waste the time that he is obliged to do by attending to these registrations; he cannot waste time in doing that in writing.

740. Could not you trust Mr. Fry, for example, to put into writing the views which you presented to him?—We could trust Mr. Fry to do that, I have no doubt, but what about the methods of dealing with his representations in London?

741. That is quite a different question. I quite understand your point as to the greater power being given to Mr. Fry to deal with them; but what I was rather dealing with for the moment was this: you were objecting to the applicant having to come to London, and you were objecting to his making representations in London to a person who was not as well acquainted with the matter, and who could not give an answer to it and a criticism on it as well as the Manchester official could?—Yes.

742. I am speaking now of that alone. That would be met, would not it, by requiring all representations to be made through the Manchester office, leaving the Manchester official to communicate the representation, with, of course, such remarks as he had to make upon it?—We should be content with that.

743. (*Mr. Mundella.*) I understand you to complain not only of the trouble of the personal application in London and the expense, but also of the delays in point of time?—The delays we have not pressed upon the attention of the London office for some two or three years past. There was very serious delay two or three years ago, but the office has quite remedied that.

Mr. C. Bailey.

26 March 1887.

744. What is the average time it takes now to get a mark registered?—I should think it would take about a month broadly speaking, but I cannot speak from experience, because, as I explained to the Committee, my firm are not registering their new marks.

745. You think, then, that the delay of a month is not a practical inconvenience?—Delay is not a matter that has pressed upon the Manchester merchants.

746. You do not wish to hurry the decision of the Registrar?—We should not like an undue delay to take place.

747. You do not press for an immediate decision, in a day or a week?—I think not; that would not be fair in so large a group of marks.

748. You would give plenty of time for research?—Certainly, that ought to be; it must be allowed to any office, whether in Manchester or London.

749. (*Chairman.*) We quite understand, that the great bulk of those registering in Class 24 are Manchester merchants. There are some Glasgow merchants. You suggest that the Glasgow people would be quite willing to have the business transacted in Manchester and would prefer that to London?—I give it, of course, as a matter of my own opinion.

750. (*Mr. Hutton.*) They expressed that opinion two years ago or wrote a letter to that effect?—Yes. They are willing to work with Manchester.

751. (*Chairman.*) Excluding Manchester and Glasgow, there are some shipping houses in London, are there not?—Many.

752. Who register in Class 24?—Who register in Class 24.

753. Would they be content to have Class 24 dealt with in Manchester only?—I should think the majority of those firms would be better pleased if they could register in Manchester through their Manchester buying houses, as being better acquainted with the details of registration and of Manchester marks than is the case in London.

754. (*Mr. Mundella.*) Those are the merchants you know that ship mainly to the East. But what do you say of all the colonial merchants in London who put their own marks on goods. They would not like to have to go to Manchester to register their marks, would they? Take the whole of the Australian trade?—My previous evidence was to the point that I believed that, judging from the advertisements in the "Trade Marks Journal," of marks passed for registration in Class 24, 90 per cent. of those advertisements of new marks are for firms resident in Manchester; or acting for firms that are resident in Glasgow and Bradford, and Liverpool and London.

755. That does not mean 90 per cent. of the trade. I will take the case of a great Australian house: they would not have a number of marks; they would only have one mark. Take a house like MacArthur's; they would have their own mark on their own goods. They have a house in New Zealand, another in South Australia, another in Sydney, and another in Melbourne. The same trade mark would run through the whole of those houses. They would register in London and in the colony. It would be rather hard upon them to require them to go to Manchester to register?—In that case these firms have already got their solitary mark which is already registered.

756. You must consider that there are new firms springing up?—The number of firms so springing up in the Australian trade would be most insignificant as compared with the vast amount of marks that have to be dealt with by the Manchester merchants.

757. (*Chairman.*) If as regards the Manchester marks that come through the Manchester office the principle adopted by the Board of Trade approximated to the view taken by their representative at Manchester, it would not be so material to you whether the ultimate registration was in Manchester or in London?—Not at all. The view of the Chamber of Commerce has always been that the last act of the process, the final registration, should be done in the London office. We have contended for that for the last two or three years. But what we do ask, and what we cannot get from the London office is the right of having all the preliminaries of registration done on the spot. Inasmuch as the London office will not allow that, friction arises between the merchants and the Board of Trade, and it is in consequence of that friction that we are giving evidence upon this very point.

758. (*Mr. Hutton.*) It would remove the whole difficulty if all the preliminaries were conducted in Manchester?—It would remove them as far as a basis for working is concerned.

759. (*Mr. Mundella.*) As a *modus vivendi*?—Yes, but if in spite of that the London office still pass a bicycle and a rope as a good mark then the *modus vivendi* would not be established on an equitable basis.

760. You mean to say if the London office overruled the decision of the recommendations of the Manchester representative of the Board of Trade as arranged between him and the Manchester merchants, fresh dissatisfaction would spring up?—More dissatisfaction would spring up. In fact, my own view is that we do not want the 1883 Act at all in Manchester. Personally I would prefer to have the whole of the marks of my firm in the position in which they stood prior to the passing of the Act of the 15th August 1875, because we hold that we have better rights at common law for the protection of our marks than we have had either by the Act of 1875 or the Act of 1883. That is my personal opinion of the matter. But the Chamber of Commerce has not gone as far as that. The Chamber of Commerce has taken up the position that all the preliminaries of registration should be done on the spot. We have asked for this from Mr. Chamberlain, we have asked for it from Mr. Mundella, we have asked for it from Lord Stanley, and we have not got that conceded to us in Manchester.

761. What you ask for now is the satisfactory arrangement of preliminaries, leaving the final decision with the Board of Trade in London?—That is what we have asked for and cannot get.

762. (*Chairman.*) It is not merely that. It is something much more than asking really for the preliminaries; because you treat as a preliminary the determination of whether the mark is one proper to be registered?—Yes.

763. That strikes me as something much more than a preliminary. The final act of registration is not the mere entering it on the register, or endorsing it "Allowed," or anything else; it is, of course, the determination. What you really want is, that though the final act of registration should take place in London, yet that subject to any extraordinary circumstance, which might make it necessary in the London office to take a different view, the view of the Manchester official of the Board of Trade should really govern in determining whether the trade mark should be accepted or not?—That is so.

764. It is something more than merely the preliminaries being carried through?—Speaking for the Manchester Chamber of Commerce, that is really what we ask for.

765. (*Mr. Mundella.*) There are 10 per cent. of the marks registered in London in Class 24. Supposing that some of the designs registered in London, or submitted for registration in London, are in conflict with some that you may have agreed upon with reference to the Board of Trade in Manchester, surely there must be an option with the Registrar in London to decide whether yours shall be registered or not. You are asking too much, are you not, in asking to decide the thing in Manchester?—Short of final registration; final decision.

766. (*Chairman.*) As I understand, the Manchester official has all these trade marks that have been registered in London?—The whole of them. No applicant for a mark resident in London could get upon the

register without that mark being examined by the Manchester department.

767. (*Baron Henry de Worms.*) Your objection would rather go to the administration of the Act in London than to any difficulty which arises in Manchester?—I think the whole difficulty comes from the London office; it is not in Manchester.

768. (*Mr. Mundella.*) You submitted to us a number of marks that bear a colourable similarity to each other. Is it the fact that in your negotiations with Mr. Fry in Manchester, he has been opposed to those marks, and that they subsequently registered them in London?—In the majority of cases I should believe that that would be the case.

769. (*Mr. Hutton.*) I gather the substance of the Manchester complaints is contained in a memorial signed by a large number of merchants in Manchester in March 1885. When the Act was passed in 1883, I think Mr. Chamberlain promised that consideration should be given to the Manchester views. That is not the petition of the Manchester Chamber of Commerce; it is a petition of the leading houses in Manchester, addressed to the Chamber of Commerce, to urge them into action, and it was after that memorial was addressed to the Chamber that we came up to see Mr. Chamberlain about it. He had previously promised if we would work under his Act for six months he would then inquire into the whole of it, and see how far he could redress any grievance that we had. But nothing really has been done, except that Mr. Fry was sent back to Manchester. I wanted to ask you this question, whether in that letter to which I referred, signed by so many merchants, the views of those merchants are not expressed by something like 75 to 80 per cent. of the shippers of cotton goods?—I hold in my hand the actual petition to the Chamber of Commerce that was signed by the Manchester merchants. It is signed by 40 of the leading merchants in Manchester, and I have no hesitation in saying that those merchants' shipments of Manchester goods will cover 75 per cent. of the total exports of Manchester goods from this country.

770. (*Baron Henry de Worms.*) I understand you to ask that the representative of the Board of Trade at Manchester should occupy virtually the same position as the experts did prior to the Act of 1875?—I think so, but personally I would prefer to protect the opinion of the official in Manchester by the judgment of a body corresponding with the old body of experts; in that way you would ensure that all trade questions, which the Board of Trade might not be thoroughly familiar with in all their details, would be adequately discussed before they were submitted to the public.

771. To put it in a practical form it means this, that the representative of the Board of Trade should have, so to speak, a consultative committee of experts, and that in any question of difficulty arising he should take the opinion of those experts; and in submitting the trade mark for final registration in London he should append to it the opinion of the committee of experts, as well as his own. Is that so?—I think that would work admirably in the view of simplifying the relations of the Manchester merchants with the Board of Trade; and would, as I explained before, ensure that when any difficult questions did arise in applications, that our views in Manchester were stated by that method to the Board of Trade. It would have saved the Board of Trade, for instance, from the circumstance of the creation of the sub-class for velveteens, to which I alluded in my last examination. It would have saved the office from having reproaches addressed to it for having registered headings. It would have saved the office from the reproaches made against it by the Manchester Chamber of Commerce for allowing a "selvage" to be passed for registration. It would have saved the office from a great many objections which we have put in the form of memorials to the Board of Trade from the Chamber of Commerce from time to time.

772. You come to that conclusion because you are of opinion that the registration of trade marks under the particular Class 24 is not identical, or cannot be taken to be absolutely identical with the general administration of trade marks by manufacturers?—That is so.

Mr. C. Bailey.
26 March 1887.

773. That is to say, that the registration of trade marks in Manchester is more a registration by merchants than a registration by manufacturers?—As I explained in my last examination, more than three fourths will be the trade marks of exporters of goods, not of producers of goods.

774. That being the case, whereas manufacturers can seldom or never come to an understanding between themselves as to a supposed identity of trade mark, in the Manchester trade such an arrangement is very frequent?—It is extremely frequent. We are extremely courteous one to the other, and frequently will go out of our way to oblige a neighbour. My own firm, for instance, has given scores of assents to other merchants applying for registration who could not have got on to the register but for our assent.

775. Therefore, you say that it would simplify the work of the Board of Trade and prevent disputes if, in view of the practice which you say obtains, of arrangements being come to, the experts, most of them themselves merchants, should advise the Board of Trade representative at Manchester so that he would really know how to advise again the central office with regard to administration?—That is so. I should base my judgment on this fact that the old body of experts who acted under the Act of 1875 had to deal with 44,000 marks. Those marks could not have been dealt with by any of the officers of the Board of Trade in any satisfactory way. Earl Cairns recognised at once the extreme difficulty of dealing with marks of which the officials in London had no knowledge either as to their application or their treatment. That body of experts disestablished over 40,000 of the 44,000 marks so submitted to them, and although my own firm was the firm that had the largest number of marks so disestablished we accepted their judgment unhesitatingly. Although we lost several thousand marks from registration we did not bring a single appeal to any court on any one of those marks so disestablished. We were so satisfied that the experts had done their work in a businesslike and equitable spirit. I think that is a very strong case as showing what the Manchester merchants can do for themselves if the Board of Trade will allow them.

776. (*Mr. Hutton.*) There is a very considerable value in these trade marks, I think, from what I have understood, as property?—I can say as to that that my firm on one occasion bought a number of trade marks from another firm going out of business, whose marks were rather insignificant, and we paid 250*l.* for them.

777. What should you consider the value of your own principal trade mark for instance?—Of one mark or all marks?

778. Take the mark on which you put a good deal of stress, the Wrestlers?—Personally, I should not recommend my firm to sell it for 1,000*l.*

779. That is one mark?—One mark.

780. I suppose you would not calculate 500 registered marks in the same ratio?—Certainly not; some of those marks I would give away.

781. This is a very sore point in Manchester?—It is a most serious question for us.

782. (*Chairman.*) I believe you have now come to your last point, the change of practice?—Yes, that is a very sore point with us in Manchester. The evidence I have tendered under the fifth heading in a very great measure applies to the sixth, because we have been anticipating what came under the sixth. It is the change of practice of the London office as regards new applications by which the rights of old owners are not now considered as was formerly the case when the onus of proof rested on the new applicant. The new applicant has considerable advantages

Mr. C. Bailey.

26 March 1887.

given to him by the present practice of the London office. As I mentioned a little while ago, the old owner has no chance of knowing what marks are being submitted to the Board of Trade, and are being passed by the Board of Trade. The first evidence that the old owner has is seeing the mark exposed on the table. Well, now, when a merchant has received the sanction of the London office to proceed with the registration of a mark which has passed the London officials; he naturally concludes that his mark is a very good mark, and cannot clash with anything else inasmuch as the London officials have made no objection to it, nor required him to obtain the assent of this, that, and the other firm. Hence, when the old owner sees the clashing mark upon the table that owner does not find the new applicant in the frame of mind which he would have been in if they had both been on the same level, and consequently in the practice of some merchants who have their new marks so passed for registration the new applicant would say, "Well, I consider that my mark is different from "yours, and inasmuch as the Registrar in London, "who is so much a better judge than myself, has "passed it, I do not see that I am called upon to "make any arrangement with you as the old owner."

783. What is your suggested remedy for that?—My suggested remedy for that is that all marks, which in no way conflict with those already on the register, should receive the sanction of a board of assessors appointed by the Government, nominated by the Manchester Chamber of Commerce on behalf of the trade, so that they can do for the new marks the same kind of work that the old body of experts did for the old marks. You then would have on such a committee the practical knowledge of the community, which it is perfectly clear to us in Manchester the London officials have not. They are not acquainted with the course and usages of trade, whereas by the appointment of such a body as that you would pave the way to a much more amicable feeling between the Board of Trade and Manchester.

784. That concludes the points you desired to bring before the Committee, I think?—Unless your Lordship would like to look at some marks that I did not put in on the last occasion (*producing some marks*). This is the sawyers' mark. 17,138 was the first, 1,663 M was the second, 37,748 was the third. The first decided to register, applies, and was refused, and a later applicant gets the right when he sends in 37,748 that belonged to 1,663 M. Then I should like to submit to your Lordship, although I am sorry the Earl of Crawford is not present, a little explanation of the method in which marks are used. I do not know which of these sets of water carriers is absolutely on the register, but we will practically take them as alike. Here is a mark which is extremely small, because we can only put it on a small surface. There is the same mark with the circle round it. Here is the mark again which has no circle, but is enlarged. Occasionally we stamp two of those marks on the same piece, so that it is like a double representation of a mark.

785. (*Mr. Hutton.*) You might make a circle of them?—Yes; I shall come to that a little later. I will answer your question on that point when I have explained the arrangement of the marks. There the artist has evidently departed from his instructions in drawing the stamp, and has made the figure a little more recumbent than he has in this. We are liable to that in the Manchester trade. They are not practised artists; they are rough workmen, and they do not always carry out one's instructions. Then you get it in that size. And here, for the purpose of protecting the mark in process of stamping, they have introduced a few light objects to save the stamp, but they are not essential parts. Here is the form in which they are used on pieces. You have a label, a mark, and various colourings, and another trade mark. You have three trade marks on that piece. These are the sort of variations that take place. Then the water-carrier is produced on labels with various borders and colourings. The registration of one of such marks covers all the rest in the view of the Manchester trade. This little mark or one smaller than that may be the registered mark, and that registration covers the whole of the rest.

786. (*Baron Henry de Worms.*) The colour has nothing to do with it?—No, nor borders. For instance, these coloured flowers round the central mass we do not regard.

787. You may register those flowers. That would not be an infringement of your mark?—Not at all. Then in the Wrestlers (and that mark fairly represents the attitude of Manchester to the Board of Trade) there are variations in many of them. In this one the artist has considerably altered it in the arrangement of the arms. There is a fair amount of want of resemblance in the treatment of those two.

788. It is the act of wrestling, really?—That is the point that I insist upon. Here again is a mark 24,062 in the open form in which it would be used upon a coarse piece of cloth. It is stamped on a bleached piece of fine texture.

789. (*Mr. Hutton.*) That is really a grey cloth stamp?—Yes, but put upon a white piece to make it clear. When we come to print it on a white piece you can get that elaboration. The same mark could be produced in that form, a few rough outlines for the purpose of impressing upon a coarse piece.

790. (*Baron Henry de Worms.*) The other piece is like print?—Just like print.

791. (*Chairman.*) There is an entirely different matter to which I should like to invite your attention, that is a complaint of the totally inadequate accommodation of the present Trade Mark Office in Manchester. The writer of the letter says, "I had "occasion to make a search a short time ago before "sending up my application. It was most annoying "to have to expose the four new marks I had to the "general view of those in the same room, a very "small staff examining the marks on the exhibition table." What should you say to that?—I should say it is not worth attention. I am in the habit constantly of going to the Trade Mark Office to look at marks, and although I think that with a little re-arrangement of the room the examination of marks by applicants could be more private than it is, I can only say that, as a matter of practice, I should never object to my marks being seen by a competitor. No honourable competitor would ever think of appropriating any hints that he got from them.

792. But you might have dishonourable competitors in the office?—We might have, but they are extremely rare. That is not a serious objection. The practice would be this. The officials are on one side the table, the applicants come on the other side of the table. After paying their fee for search, they ask to see such and such marks; perhaps it is Wrestlers that they wish to see. Then the applicant may or may not expose his own mark. It rests with himself how much of it he allows to be seen by other people; it is under his own control. If he has got an idea that he does not want to expose it to the rest of the applicants in the same room he need not show it. It is within his own control to do what he likes with his stamp. But the trade marks officials are obliged to show the marks which are asked for, and those marks are fully exposed to whoever sees them.

793. You think there might be an improvement by some re-arrangement of the office, but that the accommodation as a whole is sufficient?—That is so.

794. (*Mr. Hutton.*) Supposing the preliminary inquiries and the applicants for registration were brought together, and all this had to be conducted in Manchester, have they sufficient accommodation for it?—I think the Manchester office would not be large enough to conduct all the correspondence that would be required when the whole of the preliminaries are attended to in Manchester. I want to bring forward another part of the practice of the office which I understand is now said to be against the law that is

to say, the endorsement of limitations of user of marks, an extremely important point to the Manchester merchant, and one I should think equally important to the Board of Trade, because unless the limitations of user are allowed, many merchants, who would be quite willing to allow a competitor to use a similar mark for another market, will now be prevented from giving their assent to the registration of a similar mark. I should like to put in some cases that illustrate this aspect of the case. I put in mark 18,379 as representing an extremely simple object, the common corn mill. There are two stones, and the upper stone is revolving round the lower stone.

795. Is that registered?—That is registered as a first class mark, no other owner having the same object on the register. The mark 55,555 is applied for; the London office, very properly, refers the applicant to the owner of 18,379 to obtain his consent. 18,379 grants the consent conditional upon his sending the mark to all other markets save that to which 18,379 sends. The owner of 18,379 makes it a condition that the limitation of user shall be affixed to the representation of the mark, in order that he may protect his own rights as an owner of the corn mill mark. The London office declines now to allow limitations of user to be endorsed on the mark, and the consequence is that the applicant 55,555 is now using this corn mill mark by the license of 18,379 in his own markets without its being registered. He goes on using it just the same, the owner of the old mark granting him licence to use it in such markets as they have mutually agreed upon.

796. (*Chairman.*) That would need an alteration of the law, would not it. That permits the registration of a mark so nearly resembling the other as to be calculated to deceive if the second applicant undertakes to send it only to certain markets. There is no provision in the Act enabling that to be done?—We regard it as a hardship for this reason, that although it is stated that he cannot register the corn mill, here is a mark 59,109, that is nearly four thousand marks later, and yet this applicant is allowed to endorse his mark, "For Bombay market only." Now if it is right for 59,109 to put a limitation of user upon the face of his mark, it ought to be equally right for the owner of 55,555 to register his mark under a similar registration. The London office is losing registration which the merchant is willing to grant. I merely point out that while the London office say, "We will not allow the limitation of user of 55,555"; 59,109 will show to your Lordship that they do permit 59,109 to put on a limitation of user. Speaking as a layman, I see nothing in the Act that prevents such limitation of user if both parties are willing to accept it.

797. Except that the Act forbids any mark being registered in a class so nearly resembling another as to be calculated to deceive, and that is what this mark is, although the proprietor of the first mark says, I do not mind your registering it, because you tell me you will undertake not to send it where it would clash with mine?—I would submit that that is one of the points in which the London Office gives us an illustration of severity, and where, in answer to Mr. Mundella's inquiries as to the impossibility of obtaining marks, you would have a very frequent source of registration if such limitations of user were allowed by the Act.

798. As I understand the practice of the office, although they would not register it for a particular market only, they would register the mark and put with the registration the documents recording an agreement between the two houses?—What the office does is to promise to file such agreements. What Manchester wants is that the nature of those agreements be exposed on the mark that is submitted to the public. It is a reasonable request.

799. (*Mr. Hutton.*) That on that mark it should be put, "Registered for Bombay only," that is what Manchester wants?—That is what Manchester wants. The office does it for 59,109, and refuses to do it for 55,555.

800. (*Chairman.*) Would not it answer your purpose if, in addition to putting "by consent," it put "by consent of Ralli Brothers, owners of"; putting in the mark with which it clashed, "to be used for "such and such markets only"?—What Ralli Brothers want is that the applicant shall distinctly state on his official application that he will not send the mark to such and such markets, or that he will state the markets to which he will undertake to confine the shipment of goods bearing that mark.

801. (*Mr. Hutton.*) That case was discussed the other day. Supposing one house sold the goods, and those goods were sold to another house and re-shipped by the purchaser to the very markets where he had undertaken not to ship them?—That would be the action of a second party.

802. (*Chairman.*) You would take the risk of that?—Certainly.

803. The difficulty would be this; of course if the new applicant were to ship to the market to which he has undertaken not to ship, you would have your remedy against him; you might obtain an injunction and prevent his doing so, but that remedy would be founded upon the agreement between you. Supposing he merely on his application stated that he only intended to send it to particular markets, that would not (unless the law contained some provision to that effect) give you any right to object. You want some provision inserted, not merely permitting this limited application, but you want some provision inserted giving the owner of the mark previously registered a legal right against the person if he ships beyond the place for which he applied for registration?—My own belief is, that this endorsement is not a legal endorsement in the sense of its being binding upon both parties. It is of the nature of an honourable understanding between two merchants. The sanction would not be given to any merchant whose standing and character would be open to doubt.

804. Your suggestion now is that the man sending in the application should put that on his application; you do not know anything beforehand of the man who is going to send in the application?—We are very particular as to whom we should give an assent to.

805. Your assent is a subsequent thing; at the time he sends in that application it does not follow that you have assented to anything?—Nothing. Before we do assent we must be quite satisfied that the house is an honourable house.

806. What is the advantage in requiring that he shall put it on his application?—The advantage is that it shows to all other applicants who want to register the hen, or whatever it may be, that they can only use it for such and such markets with the assent of the two previous owners.

807. Does not any person going to examine a mark see that it is by consent?—It does not say who is giving the consent.

808. That endorsement is on it, "by consent"?—Yes.

809. What I suggest is, would not it meet your view if under the "by consent" on the face of the document there was stated "by consent of So-and-so, "owners of such and such a mark, the applicant "undertaking to ship only to So-and-so"?—That would be perfectly satisfactory.

810. What you want is the fact admitted?—Yes. My contention, further, is that if it is wrong to put on "For the Bombay market only," as is the case here, it is equally wrong to put on "by consent"; but that is done as a constant practice of the office, and if the one instance is allowed the second instance should be.

811. It would be an advantage, would not it, if it were stated by whose consent?—Undoubtedly.

812. Referring to the previous number?—Undoubtedly it would be a great advantage to both parties.

Mr. C. Bailey.

26 March 1887.

813. (*Baron Henry de Worms.*) You would not put the limitations on the stamp?—I would prefer that the limitations were on.

814. (*Mr. Hutton.*) It would not get over the difficulty of a firm buying those very goods in Bombay and shipping them to Zanzibar, we will say?—We must take the risk of that.

815. (*Baron Henry de Worms.*) That is an arrangement between the parties; that is nothing to do with this?—Not at all.

816. It has the advantage of simplifying the registration of trade marks by accounting for two similar marks being on the register?—That is the point, and a very necessary point to be observed. If there were a local law in Zanzibar by which the old owner had registered his mark, or its acceptance by the Trade Marks office in London was held to be legal in that particular place, then the parties would fight the matter out in the local market.

817. (*Mr. Hutton.*) Let me call your attention to questions 208–210 asked by Lord Macnaghten. Supposing a man stamps his goods with three trees or a circle, would that be admissible?—As I stated in my former evidence, the owner of the single mark ought to be consulted before a double representation of the mark or a treble representation of the mark should be put on the register. The case that you have in your hand of the water carrier is a case where the single stamp is stamped twice on the same pieces, and if some merchant applied for two water carriers together in one mark he is infringing the right that belongs to the owner of the one water carrier, who has stamped his mark twice.

817*a*. Have you any observations to offer as regards designs. I understand the inquiry bears also on the copyright of designs as well as of trade marks, and I wanted to illustrate a practice of my firm in reference to this matter. Those marks, 396,196, and following, are Dhootee designs; that is to say, the selvage of the cloth from one end to the other on each side is occupied with a design, generally in colour. A very common object is what is known in the Indian market as the pine. Everybody sends it. It was formerly the practice of my firm to register the whole of these designs, my firm being the largest shippers of such goods to the East. About 10 years ago we stopped the practice of registering the marks under the Designs Act, because we hold that the only use of the registrar's certificate was to show that it was in use at a particular date, and its disadvantage was that our right to the design ended at the end of the third year after registration. We therefore decided not to register any more of those designs. Here is a design which I designed myself in the year 1878. If I had put that upon the register our right to it would have ceased at the end of the third year. In this year, 1887, we are still in the enjoyment of that particular design by the courtesy of all our neighbours; in other words, by non-registration. As a matter of fact, we obtain better advantages than we do by registration.

818. (*Chairman.*) That results from the registration being limited in effect to three years?—Not only so, but there is no thorough search. I have not asked for these nine particular designs. I asked for a few designs to be sent in, because I expected to find amongst them something that was not original, and the idea of the Designs Act is that the design must be original in order to give it registration. Amongst these nine I found mark 395,937, which is not an original mark. It has been shipped practically by my own firm, and, I think, other firms besides, but yet the Registrar has accepted it as a good design, and has given a certificate of registration.

819. As we know a very large number of those are registered, and you cannot index thousands very well, must not it be very difficult to find out whether things have been registered before?—It is for that reason that we think registration is not worth anything except as evidence that it was in use at a certain date. These are designs produced that are constantly going to India, and in which we obtain by the favour of our competitors all the advantages of registration without registering the design.

820. (*Mr. Hutton.*) *These* are registered?—*Those* are registered. *These* are not. I thought I would submit *these*.

821. (*Chairman.*) Is your suggestion doing away with the registering of these designs?—I have no practical suggestion to give on the point except this that I think it would be extremely difficult to have a thorough search of designs. They run so much one into the other. You see those two designs, the roses, are extremely near to each other.

822. Are these registered in colours?—Always. It is the design that is registered, they have generally sent in the design in some coloured lines.

823. (*Mr. Hutton.*) You must register it in every colour, must not you?—No, not at all. This mark, for instance, which has a red flushing upon an amber base could also be sent, and is sent, as a blue flushing upon a pink base, and the border in blue and pink is covered by the registration of the same design in the red and amber.

The witness withdrew.

Adjourned to Saturday next at 11 o'clock.

Board of Trade, Whitehall.

Saturday, April 2nd, 1887.

PRESENT:

LORD HERSCHELL.	BARON HENRY DE WORMS, M.P.
LORD MACNAGHTEN.	JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. EDMUND JOHNSON, F.S.S., called in and examined.

Mr. E. Johnson, F.S.S.

2 April 1887.

824. (*Chairman.*) You are the manager of the Trade Mark Protection Society?—Yes.

825. And honorary secretary of the London Trade Marks Committee?—Yes.

826. You have given your attention, I believe, to the working of the trade marks part of the Patent and Trade Marks Act?—Continuously, from the first, and previously under the old Act.

827. The old Act before the present Act was passed?—Yes.

828. Will you give us your experience of any defects that you may have ascertained in the working of the present Act?—I will; and under a large number of heads which, if your Lordship will permit me, I might first mention, and then deal with each separately subsequently. The principal difficulty under which trade mark owners suffer at present is the uncertainty of the procedure: the varying instructions from the Board of Trade, which necessitate dealing with applications in one way at one time and in another way a short time afterwards; sometimes again reverting to the earlier system at a later date, so placing the applicants who apply from time to time, particularly those who have sent in their papers earlier, at a great disadvantage compared with those who come in during a less restricted system at the office and occasionally can thus take advantage of the applications which were made earlier and at that refused to the original applicants for the same words or devices (but this principally applies to word marks), and so the original claimant to a word is actually shut out by the later applicant coming in and getting registration. The original applicant in many cases will have refrained from using the mark, simply because he preferred not to use a mark that was not yet registered, otherwise he would have created a user which would have entitled him to oppose the second applicant. That is the first point, which I think is an important one. The next is the terrible delay, which is a continuous grievance; the delay in procedure, which I take it can only arise from an insufficiency of staff. The instructions from the Board of Trade to the officials at the Patent Office are not published, and trade mark owners and the agents acting for them are so not enabled to take advantage of the removal of any restrictions. Under the present practice as to the use of marks, a system prevails of following what is the actual use, the manner in which the mark is to be applied, in this way: the word claimed is not considered alone so far as concerns the word itself, but likewise the use followed up theoretically as in connexion with the use of the goods and by the persons using such goods. I am quite unable to follow the reasoning under which this is justified. The next point is this; An individual owner trading under the style of a firm, mostly under the addition of the "& Co.," is by the present procedure forced to apply for registration in his individual name. In this way, when taking a partner perhaps soon afterwards, an assignment of the mark into the full partnership name is immediately required. This could simply be obviated by registering in the trading name in the first instance. Then there is a system of disclaimers under the Act. The particulars of what is disclaimed in this way never transpire so far as the public is concerned, creating much confusion and involving the lodging of many unnecessary oppositions, and much useless correspondence. The next point is the eccentricities in practice in respect to word marks. Then there are difficulties in connexion with the certificates issued, particularly for foreign registrations. The word "brands," in section 64, needs some clear definition as to what is intended to be covered by it. At present its operation is restricted to tobaccos and tin plates. Tobacco brands are recognised, and tin plate brands are recognised. The Act in no way restricts it. I think brands should he recognised in every trade equally. Even geographical words are taken for tin plates. The geographical question is one of the difficulties I would refer to; the question is as to what are to be the permanent restrictions when once a system is settled upon. In practice a sub-division of classes is one of the points that becomes necessary to consider.

829. At all events those are the principal points?—Yes.

830. If there are any others we can refer to them afterwards. We will take them *seriatim*. Beginning with the first, the uncertainty of procedure, what have you to say with regard to that?—The suggestions I make are derived from my experience in connexion with the carrying through by the Trade Mark Protection Society and myself, separately and conjointly, of about one-third or perhaps nearly half of all the registrations effected at the Patent Office since 1876; and recently attending upwards of a thousand hearings at the Patent Office, upon which it might well be thought almost every possible question would seem to have presented itself; but as a matter of fact, new points, as I am sure the Comptroller and the Registrar will confirm, seem continually from day to day to arise. So complicated are the questions constantly presenting themselves in the various classes in which word trade marks are most actively concerned, that with every possible facility the law can provide it will seemingly ever be impossible otherwise than to leave much to the discretion of the officials at the Patent Office, whose daily increasing experience ought with advantage to be brought to bear for the benefit of the public. This, however, can only be so if unrestricted by continually varying instructions, which not only complicate the work in progress, but always inflict injustice on those trade mark owners whose applications are dealt with under the more restricted regulations as compared with those carried through either previously or later under a more liberal administration of the law. Uniformity in practice is the urgently pressing want of manufacturers and merchants, for in business operations certainty in the use of a trade mark is the first condition to giving value to it; whilst if its continuity in the form originally adopted be interrupted, or its very existence destroyed at a later date by some adverse decision in the courts, the result is tantamount to depriving the owner of a valuable portion of his legitimate income created by the advertising, or other means adopted by him to establish renown for any special article sold under the trade mark which it has borne from the first, but

Mr. E. Johnson, F.S.S.

2 April 1887.

which it is suddenly held to be invalidated so far as concerns exclusive rights in its continued use. To rescue from the danger of annihilation a number of valuable word marks that have not as yet had the misfortune to bear the test of our law courts is now a pressing duty on the Legislature; depending entirely on the future working of the Patent Office.

831. Give us an illustration of what you mean by the varying instructions which create this uncertainty. In what respect do they vary?—Certain words are taken at certain times, and subsequently, under fresh instructions, similar words refused; and later on again, perhaps under a further variation in the practice, the originally claimed words accepted from fresh applicants.

832. I understand the uncertainty which is created by the different view taken according to you at different times with reference to words. Does your evidence on this point relate only to the difficulty with regard to word registration, or does it extend also to marks?—Mainly to words, but it also applies to devices, more particularly under the question of the separate elements and the mark as a whole; there has been very much difficulty under that head.

833. Are any of the marks that you register for the Manchester trade for the export trade?—Very little indeed from Manchester. I claim but slight experience with the cotton marks.

834. What class of marks are you connected with the registration of?—All others, excepting cottons, and in a limited degree the Sheffield marks.

835. The practice with regard to the marks you deal with is rather for individual firms to have one or two marks, not to register a large number of marks?—On the contrary. I might cite the soap trade. The soap trade lately have had a very large number of marks.

836. For the same firm or owner?—For the same and various firms also. Most of the large soap houses find in working their business that a particular customer in a particular district likes to have one brand entirely reserved to himself. In that way they register say 50 good word marks, as they consider them. They give one to their retailing agent in Leeds, another to a Manchester house, and a third to one in Sheffield, and so on; restricting themselves that the same trade mark shall not be used for any other customer in that particular district. They would give it again to the West of England.

837. So that the same manufacturer registers several trade marks for the same article?—For the same article; sometimes restricting the use of one mark to one particular man in one district.

838. That is merely a matter of his business?—Simply a matter of arrangement.

839. It has nothing to do with the registration?—He is the registered owner of all.

840. In regard to the trade marks, what is the difference of practice that you say has prevailed. Is it sometimes greater strictness as to what creates resemblance?—Quite so. Rather than the question of resemblance it is mostly the question of what is eligible for registration.

841. Eligible, why?—Under the rules of being a mark which should be proceeded with or not, quite independent of search. This question is first decided at the Patent Office.

842. Do you mean as not being a distinctive mark?—As not being distinctive *per se*. As not being inherently a mark entitled to registration under the section.

843. Give us an illustration. What sort of mark is not held entitled at all, supposing it does not resemble any previous mark?—Let me take the unfortunate word "jubilee."

844. I quite understand the words; we will deal with them separately. I want now to confine my questions to marks as distinct from words?—Originally we had restrictions as to flags of foreign countries, that I remember was one branch. Now we can register flags of all countries except England. The same applies to the arms of all countries, reigning sovereigns' names, and portraits of reigning sovereigns outside the United Kingdom were excluded. Now all are admitted excepting our own Royal Family.

845. The practice, therefore, has become more liberal as regards what the office will register?—As far as devices are concerned I think we have very little to complain of, the office has become continuously more liberal.

846. So that now as regards devices, whatever may have been the case before and the uncertainty created by changes, you are now fairly well satisfied with the present practice?—I think we can accept it as satisfactory.

847. So that really the difficulty referred to of uncertainty now is confined to the word marks?—Precisely so.

848. We will revert to that afterwards under your seventh head, the eccentricities in practice as to word marks. Will you proceed to the second head, which is the delay?—The average time, I think, within which an application is now passed for advertising may be put at a little exceeding two months. I find I wrote to the Patent Office twice this week inquiring as to the progress of applications lodged as far back as the 21st of January.

849. (*Baron Henry de Worms.*) Is that from the first application?—I have had no communication as regards those applications except in the form of acknowledgment of the papers.

850. (*Chairman.*) That is the time from application to the advertisement and acceptance?—It may be so if it is without any difficulty, but now difficulties may arise.

851. This is a case of two months where no difficulties have arisen?—It is so on an average now.

852. (*Lord Macnaghten.*) Do you think that is an unreasonable time?—Very much so.

853. I suppose some time must be required for making investigations?—Certain marks require really a search of perhaps one hour. In justice to the office it must be explained they are all taken by rotation. If a very serious search involving a whole day's labour is required in the case of No. 9001, No. 9002 must wait until that is completed.

854. Would it be possible to sift them in any way, do you think?—I am coming to that under a financial question presently—under suggestion of an expedition fee.

855. (*Chairman.*) Your objection under the second head is that the ordinary time taken, when there is no special difficulty arising, is too long?—Much too long for the manufacturer.

856. (*Mr. Hutton.*) Have not the words to be advertised for six weeks?—That comes after this stage. The various stages we go through are these. I will follow an application through. The application papers are lodged at the office. An acknowledgment form is then issued by the office; that always follows within 24 hours. Next the papers are searched at the office from the point of view as to eligibility for registration. That is if a word mark, whether it is one that ought to be accepted or off-hand to be refused. If the mark is approved for advertising we hear nothing for a considerable time; for the usual delay takes place because it goes into the next department for search. If it is objected to, there is a notice to attend a hearing under the Act; the Comptroller can do no adverse thing to the applicant until he has given him a hearing. That is a 10 days' notice. The hearing is attended. If at the hearing the Comptroller holds that the mark is still ineligible for registration, after fairly, and most fairly, arguing the questions involved, the application is refused and so ends. It never reaches the further stage. If at the hearing the application is allowed to continue in its first form, or under any modification, then it proceeds into the searching department; here a long interval ensues because it has to take the rotation order. The preliminary work is done promptly as to the eligibility, because that is not a matter of investigation in con-

nexion with all other marks, it is merely passing through one stage. The search department is really what one may term the block. There the papers are fairly lost for a long time. After the searching is completed in very many instances still some little alterations are necessary. Then the papers are returned to effect those alterations. After that it is a matter of delay or promptitude with the applicant himself. If the papers are promptly returned to the office, very soon afterwards the advertising papers are issued. After the advertising papers are returned with the blocks then the insertion in the Official Journal takes place at the earliest convenient period.

857. (*Chairman.*) Do I understand that the two months you have put as the average is taken from the application to the advertising stage even where there is no sending back and no difficulty arises?—Quite so, and mostly exceeded.

858. (*Baron Henry de Worms.*) That is the ordinary course?—Yes.

859. Two months in the minimum?—There may have been some instances where there has been more promptitude, but if so it is quite exceptional.

860. On an average it is two months?—On an average. Then ensues advertising in the Official Journal, which again cannot always be immediately effected. I have known instances where blocks are kept many weeks; but the journal lately has been, under the sanction of the Treasury and by the Board here, allowed to be double its size, and in that way has cleared off, since the 1st January, a large mass of arrears. The journal appears; then there is the two month's statutory period again for advertising before the registration can be completed if no opposition is lodged. (I am going to suggest that that period might be reduced to one month.)

861. Is that subsequent to the two months?—Yes. So that on an average it is practically, as I put it in a letter to the "Times" early this year, five months before a trade mark is registered, and that, I think, with a little judicious management and dealing with the dates in a way in which they could with fairness to all parties be changed, could be reduced to three months, which would be a very considerable improvement.

862. (*Chairman.*) Will you suggest what is the scheme which you propose for diminishing this delay?—Then I shall have to go to the Act itself. The periods are statutory. The first suggestion, of course, would be an increase of the staff to deal more rapidly with the papers. Then I have suggestions under "fees" which I will give at the proper moment, under which I think most willingly the public will supply the additional cost, so that there will not be a question of revenue arising at all. I could improve the office by creating additional fees which will provide the extra salaries. The first statutory period is the two months after advertising. The Comptroller is to advertise as soon as may be after receipt of the papers.

863. Take the prior delay which occurs before the advertising. That could only be met, I suppose, by more work being done in the office?—Purely so. It is a question of internal office administration. The searching department at the office is too weak. Searches are made with the utmost care; it is most rare indeed that the office passes any mark which conflicts with another already registered. I have had cases but they are quite exceptional.

864. Of course care is essential?—And extreme care is taken.

865. (*Baron Henry de Worms.*) What do you take to be the average time of the search?—I can hardly give an opinion on that. I have never been present. It would vary very much. I know their system. They have all the classes sub divided by subjects. It is a most elaborate and well working organisation.

866. (*Lord Macnaghten.*) The index is a speciality?—Yes.

867. (*Chairman.*) Has the delay increased. For example a year ago was there more delay or just about the same as now?—I think it is worse under the increased number of applications now reaching the office. It is naturally so, as I believe there has been no increase in the staff at the office.

868. Of course it necessarily would get worse if the office is undermanned. If the office is undermanned and delay arises from it at the start, that delay must become greater and greater?—And again our applications are steadily increasing in number. Of course embarrassment grows with the increase. I am reminded of another important feature which creates delays. Every time the board here issue any new instructions, that involves reviewing of the applications in progress which have not yet been finally dealt with, to see whether to meet the later instructions any should be modified which had already proceeded to a certain stage under the earlier system.

869. No doubt with regard to words there has been a good deal of delay in waiting to hear the decision of the court in particular cases?—Quite so.

870. I understand as to the first period, namely, the delay between the application and the advertisement, the remedy you suggest would be a larger staff to deal with it?—Yes.

871. Now as to the subsequent delays after the advertisement. You suggest a shortening of the period?—A shortening of the statutory period by one month. That the registration after advertising should be completed within one month if no opposition is lodged. In many instances the oppositions are very frivolous.

872. (*Lord Macnaghten.*) Do you think one month would be sufficient time to give notice to all persons who would be likely to oppose?—In this country; and really as it stands the two months is useless for the colonies. No man would cable over from Melbourne that he has seen a trade mark to which he objects in the journal and instruct anyone to take proceedings here. Cabling is too costly from the colonies. I do not think we have had a single instance of an opposition from the colonies.

873. Are the oppositions generally sent in at the beginning of the period or do they wait until the end?—Generally on the last day, therefore they would be sent just as well at the end of 30 days as at the expiration of two months. After the opposition again we have two months for the counter statement in reply. That well could be one month. It is absurd to think that a man requires two months to substantiate an answer to the very small amount of matter that transpires in an opposition.

874. Have you much to do with opposing marks as well as registering?—Very much indeed.

875. You are competent to speak on the question of time?—I am not a lawyer, but I have had experience in connexion with these matters in giving the instructions and superintending the proceedings, which I always do in every case that passes through our office. I think we have about 40 home actions at the present moment, and 20 in the colonies and foreign countries.

876. (*Mr. Hutton.*) Are they all on words?—A very large proportion.

877. (*Chairman.*) So that you would first shorten the statutory period of opposition from two months to one month; and then shorten the statutory period of answer to the opposition from two months to one?—Yes.

878. So that where there was no opposition that would shorten it by one month. Where there was opposition it would prevent so much further delay as now occurs?—We should get two months earlier into court, and without creating any inconvenience or doing any injustice to any parties concerned.

879. Is there anything else on the subject of delay which you would like to say?—I think it may be said that from the advertising stage the office work is a mere matter of routine, and proceeds with due promptitude.

Mr. E. Johnson, F.S.S.

2 April 1887.

880. Your third point was the non-publication of directions from the Board of Trade to the Comptroller?—Of course there may be delicate reasons why that should not be too openly dealt with; but so far as the instructions admit of translation into information for the use of the public, I think they should immediately appear in the instructions to applicants, perhaps in the form of leaflets, and always added in any new edition.

881. Of course you understand there would be some directions given by the Board of Trade to the Comptroller that it would be impossible to make public?—Yes.

882. But your suggestion is that if there is any such change of practice as could properly be communicated, and would be likely to benefit applicants, it should be communicated?—Quite so, and as promptly as possible. And more particularly so to the applicants who are aggrieved by the previous procedure. There seems to be a system at the Patent Office by which an application once refused is quite lost sight of; it has no further recognised existence from the date of its refusal. I almost think that that is rather harsh treatment to the applicant, and that when any change such as is suggested does arise the printed form in which that transpires ought to be sent to that applicant; in fact he ought to have the primary right to apply for what had been refused to him earlier before a new applicant comes in. I have seen gross injustice under this head in some cases.

883. That is where there is a change in practice which would lead the office to accept some subject of registration which they had previously rejected?—Quite so.

884. (*Lord Macnaghten.*) Have you had any access to those instructions which are furnished by the Board of Trade to the Comptroller?—Never. In conversation with the Comptroller on hearings they are necessarily referred to.

885. (*Mr. Hutton.*) In your communications with the Board of Trade they refer to rules or instructions which prevent them?—Quite so; and the letters are issued from the Patent Office under a form of "On "further consideration." That is a form of heading "On further consideration it is found that." Then any change in the practice is in that way communicated in connexion with the pending applications; but of course any that have meanwhile been refused get no further communications; they are gone.

886. (*Chairman.*) Of course they could not be taken up again, probably, at the stage where they were when they were refused; but you suggest they might be communicated with so as to enable them to renew their application, and have them reconsidered under the altered circumstances?—Exactly so; as new applications; because, of course, having been refused at a certain date when they were ineligible they can only be reconsidered now as new applications of a later date. I raise no question with regard to the fees. The fees are gone. They must pay fresh fees.

887. Then, your next point is, "Following the use of marks"?—I am quite unable to explain in what way that is arrived at.

888. First of all, I do not quite understand what you mean by "Following the use of marks." Will you explain that?—It is this; that in an application for a word mark as applied to certain goods the Comptroller considers it descriptive if he can in any way follow the goods into their use, and even by whom they are to be used. For instance, he would hold that the word "mariner" is a bad trade mark for rum, because sailors drink it. The system of reasoning under which that is considered justifiable I certainly am unable to follow. I only know that it is so in practice. I should like the Comptroller to be asked to be kind enough to give the Committee his explanation.

889. I suppose "mariner" is not a fancy word in relation to rum, because it is descriptive of the class of people who drink rum?—Is it any more descriptive of rum than "snowball," or any other word. Of course, we have to face the decisions in the Court of Appeal. Lord Justice Cotton, the other day in the "Electric" case, said that because the word is inapplicable it is not necessarily to be considered a good trade mark; that is if inapplicable as an adjective or descriptive as applied to the goods, it is not to be considered that therefore it is to be a good trade mark. The whole question of the word marks brings us back to the necessity for a fresh definition which would really remove all these difficulties. I do not see in any way how the judges are to do otherwise at present than interpret the Act in the best way they can, the definition being such as to invite difficulty. We must really look to a future definition.

890. Give us your idea of what would be a fancy word and what would not. How would you distinguish between what was a fancy word and what was not?—I go to the root of the question by asking in the first instance whether we are bound to assume that a trade mark ought always to be a fancy word, whether the whole system under which we originally commenced may not possibly be wrong.

891. Let me put this to elucidate your view. Would you allow the registration of "Sheffield" as a trade mark in relation to bars of iron?—No.

892. Why not?—If a trade mark for one man it would be to the exclusion of all others, depriving them of giving the proper name to the goods which they all manufacture.

893. Does not that reasoning exclude everything except what may be called a fancy mark, that is what is not descriptive of the place of origin or the nature of the goods?—The same objection does not apply to words not of a geographical nature unless purely and fairly descriptive, in the dictionary sense, of the goods themselves. I have presumed, though not a lawyer, to venture to suggest a definition which if the Committee will allow me I should like to read.

894. (*Lord Macnaghten.*) You are not against the use of word marks altogether?—I desire to see the use more extended, and simply for this reason, that they are a class of marks which our manufacturers seem to prefer, and if so why should they be hampered so long as they are asking for that which is useful to themselves and not injuring others.

895. So long as they are only desiring to identify their own goods I can understand it. Many words seem to me to have been adopted for the purpose of keeping other people out of the market?—Those should be refused in all cases.

896. (*Chairman.*) Take the illustration you gave of "mariner" in relation to rum? Might not that create quite conceivable difficulties. A man sells his rum specially suitable for mariners and for seamen; he calls it "mariner's" rum not as a trade mark, but as descriptive of the article. You would exclude that by allowing somebody else to use the word "mariner" in relation to rum?—No; there would be no possibility of restraining every rum manufacturer from using the word "mariner" in the proper sense of saying that his rum is suitable for the use of mariners. It is simply that the first man who takes the word "mariner" would be entitled to say "Mariner Trade Mark"; "My rum is the Mariner Brand." I should go no farther.

897. That strikes me as sailing near to the wind, to choose a word that has certainly relation to the class of people who principally use the article?—Then all classes would be excluded. We should find the restrictions very severe in selecting word marks.

898. (*Baron Henry de Worms.*) You have a similar case in Raggett's nourishing stout?—That is purely an adjective, purely qualitative. The "mariner" rum would not mean a rum that only a sailor may drink.

899. (*Lord Macnaghten.*) It is rum for which sailors have a peculiar affection?—They are large consumers undoubtedly.

900. You mentioned soap as a difficulty. Would you allow such a word as "self-washer" to be applied to soap?—I think not. It is descriptive.

901. That has been registered?—That has been registered, but it has been taken off the register recently. Mr. Justice Chitty has taken it off.

902. (*Baron Henry de Worms.*) Was that held to be good?—No, not when tested in Court.

903. (*Chairman.*) Will you now give us your proposed definition?—This would be a substitution for sub-section C. of section 64. The present definition reads: "A distinctive device, mark, brand, heading, "label, ticket, or fancy word or words not in common "use." I think the "fancy word or words" have always been the source of all our trouble. I would suggest: "A distinctive device, mark, brand, head- "ing, label, ticket," so far it is exactly as it was; then a semi-colon, so as to get rid of the governing by the word "distinctive," "or any word or words, "fanciful or otherwise (in any language), provided "that such word or words be not inherently in any "way descriptive or qualitative of the goods themselves "to which applied, or to be applied, or in common "use in connexion with such goods."

904. Or their place of origin; would you allow it to be descriptive of the place of origin?—The geographical matter is not in this section; that is why I do not bring it in here.

905. Whether included in this or not you intend to exclude geographical description indicative of the place of origin of the goods?—I have a remark to make upon that. I thought there might be a limitation. The geographical question is beset with much difficulty. Remote places are not on a level with well known cities and towns. The mere use of the name of a place *qua* trade mark can in no way be held to prevent the legitimate use of the name of such a place by way of address, by any other manufacturer of the same class of goods in such place. It may be worth consideration whether the geographical ban might not by way of compromise be always enforced so far as concerns cities and towns, thus leaving villages open, and also names given to districts of which applicants also are the occupying owners. The Equator has recently been refused as a trade mark for soap, in class 47. I am unaware of there being any directory in which soap manufacturers carrying on business at this address could be traced! The question of owners of places arose some little time since with Sir Henry Peek. He had his Rousdon dinners. He was so afraid that the word Rousdon would be taken by some restaurant or cheap food manufacturers that he was anxious to have the word registered, so as to really get exclusive rights as though he were a manufacturer of articles of food himself. After a deal of persuasion at the Patent Office it was passed. That was a purely geographical mark. But then, Rousdon is his seat in Devonshire, of which he owns every inch; and the geographical objection as suggested here, so far as concerns the place owned by an applicant, was not allowed to prevail.

906. I quite understand you might exclude from prohibition of geographical names, the case where a geographical name applied only to that which was the exclusive property of the applicant. It seems to me that would be free from the objection which ordinarily applies to geographical names, that you might exclude other people who had just as much right to it?—Then, as regards remote and comparatively unknown places which would hardly figure in a gazetteer.

907. (*Lord Macnaghten.*) You remember the Glenfield Starch case?—I do. That was the very first trade mark case I was concerned in. That case is much earlier than our Registration Acts. There, of course, the *mala fides* of the defendant was apparent. He simply had a little stable to get the Glenfield address. He put some straw in it, I think, and never made any starch there. I have another instance in regard to old marks under the geographical question. I think Sir George Jessel's decisions under the Act of 1875 in all the cases which went before him, so far as concerns the privileges of old marks, ought still to be respected. The geographical ban applied to any old mark, which for some reason or other has not been registered until now, ought not to be put into operation. I have one particular instance where a seemingly gross injustice is committed upon a large cloth manufacturer in the West of England. He registered the word "Himalayan" many years ago for shawls. I think he registered them in the wrong class. Therefore, actually, in his business he is not protected at all. He registered for shawls, which are in one class, whilst shawls in the piece come into the adjoining class. He thus registered for shawls which he never yet had sold, and actually perjured himself in a declaration in stating that he had used the mark for 20 years previously. He is not registered at all in the class for piece goods, where he ought to be, so that he finds himself in this position, that he cannot restrain an infringement, and he cannot get registered, and he can do nothing but purge himself of his unintentional perjury by cancelling the old registration and having nothing whatever on the register. Those are the papers (*handing same to the Committee*).

908. (*Chairman.*) That is on the ground that "Himalayan" being descriptive of a place, and the name of a place?—"Himalayan" is admittedly geographical, and the word "Hymalayan," as he puts it, is fanciful; but still it is a colourable imitation of this in the correct spelling. He uses it both ways.

909. Are all geographical names refused now?—Except for tin plates. I have a recent journal here where five or six are advertised for tin plates as brands. I have the words "Hereford, "Fife," "Victoria," and "Truro." I believe "Victoria" is not for tin plates. Those are eccentricities. I cannot call them anything else. "Victoria" appears there for velocipedes and lawn tennis; possibly it is some oversight. Geographical titles are admitted as brands for tin plates. If the brand is to be recognised in the tin plate trade, and mildly so in tobacco, I claim that in fairness other trades should have their brands. The soap trade has older brands than any of these.

910. What is the exact distinction between a brand and a distinctive device?—According simply to the strict meaning of the word the brand would be what is burnt in upon the wood, or the cask, or whatever may be the containing vessel in connexion with the goods.

911. Has the registered owner of a brand only a right to use it in that way?—I should think not. His registration would not be limited or described even as a brand. Being a brand would make it eligible for registration. When once registered, I think he would have free latitude to put it on a level with every other trade mark.

912. Could he use it as a label or ticket?—I think he would be entitled to put it on his label or ticket, and call it his trade mark.

913. I suppose it is known from the nature of the goods that he manufactures?—The word "brand" gets its signification more particularly in another way in the export business. So many casks of beer are shipped to Australia, so many packages of iron, so many bales or boxes of other goods, cases of Sheffield ware. These are all put upon the Australian market under auction. They are advertised for sale on a certain day, say so many casks of the "Cat" brand of beer. That would be the beer of a particular house whose trade mark is a cat. The name of the house does not transpire. I think in connexion with Bass' their name has always been by the trade regarded as superior to their trade mark, and so commanding a higher price; otherwise Bass' beer would not now be known in the colonies and all over the world as Bass' beer. It would be the "triangle" beer, the "pyramid" beer, the words expressive of the device which is their trade mark. In many trades the name is entirely lost. I could show you the price currents from the Australian papers and the notices of the sales. The names of the manufacturers of the goods are not stated. It is simply the brand. So much of the "Emu" Iron; so much of the "Gospel Oak." It is the brand; and in that way a question arises whether we are not

Mr. E. Johnson, F.S.S.

1 April 1887.

entitled to registration for that very much as a brand which is refused simply as a trade mark in the ordinary acceptation of the term. Again, for advertising purposes, a large manufacturer who has a particular trade mark in advertising in the "Times," cannot put his device. Therefore he is obliged to give his trade mark the name which is expressive of that device; and in that way again the word mark comes in; and if he is not to be equally protected for the word itself as well as for the device, he is at a great disadvantage. The manufacturer never considers himself protected until he has a certificate of registration.

914. (*Mr. Hutton.*) If he put the word under the device would they register it?—They accept it in that form. Then it is simply the added matter.

915. The two go together, but they would not register separately?—The two go together; but the applicants prefer, n all cases, two registrations. They prefer to register their device, and make themselves doubly safe by registering the word which is expressive of the device, so creating an emblematic trade mark and a word trade mark.

916. (*Chairman.*) Of course there would be no objection, I suppose, to registering, in connexion with the class under which beer is registered, the Pyramid or the word "Pyramid"?—None, whatever. The Patent Office, of course, to any other applicant would refuse "pyramid" and would refuse "triangle." They respect Bass' registration of the device. For Bass himself they will accept the word triangle, and the word Pyramid if he chooses to apply.

917. The next point is the individual trading under a firm, and obliged to apply for registration in his individual name, and not in the name of the firm. Under what provision of the Act does that arise?—I find nothing referring to it in the Act. The only reference is in the Rule No. 7, page 4. That is the nearest approach to it. It is a matter of office practice.

918. That seems to imply that it might be made by the firm "An application for registration of a trade "mark if made by any firm or partnership may be "signed by some one or more members of such "firm"?—May you take it as the firm or partnership if there is only one individual trading as a firm or partnership. There is no actual partnership when it is one individual so trading.

919. Your point applies to the case where at the time of the application for registration it is an individual and not a firm?—An individual, but still trading with "& Co.," or under the name of some old firm. The single owner is registered. "John Robinson" is registered, not "John Robinson & Co."

920. (*Mr. Hutton.*) How is it in the case of a limited liability company?—They are registered in the name of the company; the documents being signed by any officer of the company, but it is the company that is registered not the officer.

921. (*Chairman.*) Your point really amounts to this, that under the Act and the rules where a person trades under a firm name the registration should be allowed in the firm name, so that if he afterwards takes a partner the firm, as then constituted, should have the benefit of it?—Quite so; that there shall be no further procedure necessary.

922. The next point is as to the system of disclaimers?—My suggestion under that head is that whatever is disclaimed in an application ought to transpire in the official journal under the advertisement.

923. What do you mean by disclaimed in an application?—Disclaimed under section 74.

924. Sub-section 2. "The applicant for entry of "any such common particular or particulars must, "however, disclaim in his application any right to "the exclusive use of the same, and a copy of the "disclaimer shall be entered on the register." Is that the sub-section?—That is it. The public have no knowledge of what is disclaimed in connexion with a mark. They see the mark advertised in its entirety and with the specification of goods in the broad terms in which the application was originally made, and so are unaware that what is actually about to be registered is a much more restricted thing than that which presents itself in the Journal.

925. Your view is that where the registration takes place with a disclaimer under the Act the disclaimer should be published or notice notified simultaneously with and in connexion with the notification of the registration?—With the notification of the application. It is the application that is advertised. This would be the means of preventing many unnecessary oppositions and frequently very considerable correspondence, where one trader has applied for something and included one common emblem in connexion with that to which he is entitled, and immediately at the request of the office has disclaimed that, or even voluntarily has done so, but the other manufacturers in the same trade are unaware of this, and frequently oppositions are lodged to an application which are wholly unnecessary, and questions asked. I shall come presently to the Act under the third portion of my evidence.

926. I come now to eccentricities in practise as to word marks?—I think I cannot do better than put in those two Journals. (*The same were handed to the Committee.*)

927. (*Baron Henry de Worms.*) "Rowe's best of all." Surely that could not be registered. That is March 2nd of this year. Is that registered?—That would be registered. I question the practice under which it is taken. Anything with an apostrophe goes through.

928. The trade mark there is "Best of all," not "Rowe." "Rowe" is the person?—Rowe is the name of the person. Rowe claims that for common soap. He claims "Rowe's best of all honey soap;" he would claim under that, "Rowe's best of all Windsor soap," "Rowe's best of all" any soap. But that of course in no way prevents the Patent Office from receiving another application for "Wilkin's best of all." They will take "Wilkin's best of all" to-morrow in face of "Rowe's best of all" to-day, simply because it is Rowe's with the apostrophe. It is the possessive. Under what principle that is arrived at I should be sorry to be compelled to explain.

929. What do you take to be the trade mark, "Rowe," or "Best of all," or the apostrophe?—Or the square line that is the containing figure.

930. (*Chairman.*) I suppose the whole thing would be the trade mark. "Rowe's best of all." No part of it?—In my own practice I never, if I can possibly help it, allow an applicant to put in such a form as that. I would never apply for the registration of "Rowe's best of all" without distinctly explaining to the applicant that I consider he is getting no registration whatever. He is simply wasting his fees.

931. I certainly confess I do not see the object of that registration, because I imagine that Rowe could put "Rowe's best of all" upon his soap, or whatever his material is, and that nobody else could put "Rowe's best of all," even if he were not registered, because they would be falsely representing that it was the manufacture of somebody else?—Yes.

931*a*. (*Lord Macnaghten.*) It would be for purposes of intimidation?—The system of deterring is strongly brought in operation with regard to these marks.

932. "All imitators beware"?—Quite so. "This is my registered mark." He will print this at the head of his circulars: "Registered Trade Mark," so and so.

933. If somebody else used it he would get a lawyer's letter referring him to that mark?—Just so.

934. Speaking from your experience, would you say it would be right to exclude from a trade mark words such as that, though they were added to a distinctive name or a person's own name?—I think such words as "Best of all" really ought not to encumber the register. I hold that whatever is registered ought to be an equivalent for the registration fee and something in which the Government of the country should feel a pride in protecting their subjects.

935. (*Chairman.*) According to your view, "Best of all" or any descriptive term of that kind would be excluded, and you would not allow it to be registered even in connexion with the manufacturer's name?—Certainly not. It comes under the section "Added matter." I think that is section 64. I do not see how the Patent Office can refuse.

936. You can only add matter to the distinctive device or a fancy word. Now Rowe is neither a distinctive device nor is it a fancy word. It is the name of a "man"?—The only possible contention is that you create a fancy term when you say "Rowe's best of all." But is it a fancy term? I am afraid it is difficult to refuse the registration.

937. I do not think it does come within the added words, because before you come to the added words you must have first the name of an individual or firm printed, impressed, or woven in some particular and distinctive manner. You cannot register the name of the individual unless it is printed?—It has never been held that these fancy letters are distinctive.

938. (*Lord Macnaghten.*) Under what section or sub-section do you suppose that has been registered?—I know no authority for the apostrophe system.

939. (*Chairman.*) You would think it is supposed to be the name of an individual printed in a particular and distinctive manner, and then the words "best of all" are added to that under the permission to add common words to a distinctive element?—Yes. I assume that that is the only way. I see no authority for this registration in the possessive form.

940. (*Mr. Hutton.*) You consider there is no value in such a trade mark as that?—I attach no value to it, except, as Lord Macnaghten has put it, for the purposes of intimidation in deterring the use of the words.

941. (*Chairman.*) The next is difficulties in connexion with certificates issued, particularly for foreign registration?—That is a question of fees. There are several questions in connexion with fees. Shall they be taken one at a time or dealt with together?

942. If this point is a question of fee, perhaps you had better reserve it until you say what you have to say on fees generally. The next point is as to the word "brands" in section 64?—In a straggling manner that has been already dealt with to a certain extent. I simply think there should be a very broad definition of what is intended to come under "brands," or that the Patent Office should of its own accord take a liberal view or consult trade authorities as to what is recognised in each trade as a brand. We have had marks refused in the soap trade in connexion with applications for Runcorn Crown, Wakefield Crown, Staffordshire Crown, Widnes Wax, which they tell me are brands in the soap trade, some of which have been recognised for nearly 100 years. In one case they offered to produce a stamp which has been in use for many years, an iron stamp with a long handle by which they impress the bars of soap. The Patent Office refused Wakefield Crown, to take that as an instance, and justly so, because "Crown" is common and Wakefield is geographical. Therefore I had nothing left, as the Comptroller facetiously put it, but the full stop. Although "Crown" may be common to the soap trade and Wakefield geographical, if the combination "Wakefield Crown" is a trade term which is recognised by the leading soap manufacturers as applying exclusively to the one house that has used it for nearly 100 years, I cannot see why it should not be protected by registration as a brand. The object in registering is not to prevent infringements by the other large manufacturers, who to a great extent respect each other's rights, but it is to prevent little men from taking possession of a brand to which they are not entitled.

943. At present you say brands are only registered in connexion with tobacco and tin plates?—And only to a limited degree with tobacco, not so fully as could be desired for tobacco.

944. Tobacco is a thing that is almost universally sold under brands in the case of superior cigars?—Quite so. The tobacco trade is a very peculiar one, both for cigars and packet tobacco. Under the Act of 1875 the earlier registrations were for cigars, the labels on the tops of the boxes, the label inside the lid, and what they call the sealing label, which closes the lid. Some manufacturers register these conjointly, the three in one; others, more careful, register each separately. Now in each of these there is the title of a certain kind of cigar, as a word, "Carmen," for instance; they are all peculiar names of Spanish origin, and some of them very bad Latin and others English words with foreign terminals.

945. Many of them are certain names?—Such as "Intimidads," of course known cigars which are the property of the great foreign manufacturers. I am speaking rather of the fancy cigars which are sold most largely in England. These labels are all registered as a whole. Under the Act of 1875 the words occurring in them could not be accepted for registration unless the label had been used before August 13th, 1875. But under the Act of 1883, a great number of these words became eligible. Still the Patent Office did not accept them in the free way in which they might, holding that there is no separate user for the words apart from the labels. If used as old marks before 1875 they would accept them now as old marks, but they will not take them as new marks, although they are quite as distinctive in themselves as very many words that have been registered in other trades. To the packet tobaccos the same would apply. Many of the packet tobacco labels have a title on them, John Bull tobacco, or "Wizards" tobacco, or whatever it may be, and short phrases, "Cheer up tobacco," "Bound to win tobacco." They will have little phrases of that kind. Where it becomes a system in the trade to have these particular terms I cannot see why the Registration Office should not follow that system and accept them. The whole principle to go upon is simply this: in giving a trader what he wants may not you go so far as to give him all that will not include injury to any one else.

946. (*Mr. Hutton.*) Would you register everything?—Register everything not interfering with anybody else's rights.

947. (*Chairman.*) Or that is not likely to interfere?—Yes. What other tobacco manufacturer is injured by your registering "Cheer up" for one manufacturer who is the first to use it? Is there any possible way of foreseeing injury? I am going to the root of the question. Are we right in originally starting with fancy words? We have become so accustomed to it under the decisions and under the way in which the questions have been carried into court that we have regarded the term "fancy" with an amount of respect, and I may almost say horror, that perhaps in the first instance showed a wrong start.

948. (*Mr. Hutton.*) How many applications do you make in a year for registration?—Personally I should think nearly a third that the office receive.

949. About how many of those are accepted or registered?—These are the refusals of 1886. There would be about 250.

950. About half refused?—Not half; it would be much less than half. It might be a tenth, I think.

951. The returns simply give the total advertisements and the total registrations?—They do not bear at all upon each other, because the registrations represent the preceding period and the applications represent the current period; the registrations follow so much later, and many applicants neglect to pay their fees for a considerable time. On an average of seven years of course that adjusts itself.

952. (*Chairman.*) Your next point, as to what words may be registered, has been probably exhausted in what you have said under the previous headings?—I think so; and the suggested new clause that I have ventured to submit.

953. Your next heading was the sub-division of classes. What have you to say with regard to that?—It has been found by experience that a large

Mr. E. Johnson, F.S.S.

2 April 1887.

number of applicants, particularly so in certain classes, whilst only requiring protection in respect of a limited portion of the goods included in the class, claim registration for the whole class, thus debarring later applicants from adopting the same marks for goods totally different from their own. This procedure inflicts much unnecessary labour in the Search Department at the Patent Office, because they search for each subject. If an application includes ten articles, each one that is enumerated has to be searched for. It must of course be borne in mind that the original applicant, under the rules, has the right to claim the whole class, but if doing so beyond his actual requirements there is no reason why he should not be called upon to pay additional fees in respect to registration in the further sub-divisions of the classes.

954. What you suggest would be that you should have more classes in fact?—Sub-classes. A whiskey distiller is generally not concerned in beer, nor a soap maker in starch and blue, yet always the full class in each instance includes all mentioned, and more besides. As an example of the subdivision that might be introduced I will take Class 43. The full heading is "Fermented liquors and spirits," which of course includes drinks of all kinds of a fermented nature. Now those might be subdivided into (A.) wines, (B.) spirits, (C.) beer and other fermented drinks, not including wines and spirits. In Class 45 again, which is the tobacco class, the full heading reads, "Tobacco, whether manufactured or unmanufactured." This might be divided into two sections. (A.) cigars and cigarettes. (B.) manufactured and unmanufactured tobacco, including snuff and all other preparations of tobacco, but not including cigars or cigarettes. Then I will take Class 47, which is very discursive. The full heading runs, "Candles, common soap, detergents, illuminat- "ing, heating or lubricating oils, matches, starch, "blue, and other preparations for laundry purposes." This might be subdivided into four sections. (A.) Candles, common soap, detergents. (B.) Illuminating, heating, or lubricating oils. (C.) Matches. (D.) Starch, blue, and other preparations for laundry purposes.

955. Would you put candles with soap?—I think so, tallow being largely used in connexion with both; I have always considered it right to bear in mind what the actual traders themselves do.

956. They do commonly include both?—So many candle manufacturers are also soap manufacturers.

957. (*Baron Henry de Worms.*) Price, for instance?—Yes; it is so throughout the trade. Why need a whiskey distiller, when wanting a trade mark for his whiskey, cover beers, and so block the class for beers and perpetually give extra searches for the beer class. Of course we are bound, when looking into this question, with say nearly 60,000 registered marks at the present day, to consider what will be the state of affairs when there are 500,000, and the complications for our successors will certainly become very serious. The search that now takes hours will then take days. There might be this restriction put upon the applications; although there might be full liberty to claim all, if they want it let them pay for it, and I think when it becomes a question of paying for each of these subdivisions the same as they now pay for the whole class, it is only those who actually want so much who will take the whole.

958. (*Chairman.*) And according to your view there would be hardly any who would want it for all?—I think a certain number will still. Some have an idea that they prefer monopolising a trade mark; that is to say, if they send their goods into a grocer's shop they prefer that no other goods in that grocer's shop, coming under the grocer's category, should have a show-card anything in the same idea or with the same device upon it to look like theirs. Many wealthy houses would still register for the whole class, and this would thus become entirely a revenue question. Under it one result or the other must follow at the Patent Office, increased fees or less work. I can answer for the manufacturers themselves that it would create no dissatisfaction. They would see the reasonableness of it.

959. I quite see that it would cause less delay in the search?—Quite so. I think it would most effectually operate in that direction.

960. (*Lord Macnaghten.*) What is the total amount of fees on registration?—5*s.* on application, and 20*s.* on registration.

961. 25*s.* covers the whole?—25*s.* covers the whole registration of a trade mark. In the heavier classes, I have mentioned there would never be more than 5*l.* instead of 25*s.* That would be a clear 3*l.* 15*s.* increased revenue to the office without any extra work. I am endeavouring under these suggestions to provide for the cost of increased staff, and I think a surplus besides. This could be done under new rules. I have not come yet to any suggestions that require a new Act except the word marks.

962. (*Chairman.*) The next matter is the fees?—Will your Lordship kindly take the schedule of fees, page 13 of the rules. The first suggestion under this head is again one of revenue. It is found at the office that a very large number of applications never reach the registration stage. Some fail under hearings; others fail under oppositions, and some again in consequence of the applicants from varying reasons not caring to complete their registrations. In this way for the whole labour devoted to a trade mark, the only fee the office gets is this first 5*s.*; and if, when everything is done, at the last moment the applicant does not register they never get any more. I think the application fee, and the registration fee ought to be balanced in a different form from what they are now. Either make the application fee 10*s.*, and the registration fee 15*s.*, or make it 12*s.* 6*d.* at each stage, keeping to the present total. In that way anyhow the office would either get 10*s.* or 12*s.* 6*d.* for each application. The labour in connexion with an application that is not registered, is no less than in one that is, and a very large source of revenue would be found in this way under the applications which are not carried through, the statistics of which of course I am unable to give, but I know from experience it is a large number.

963. Do you think there would be dissatisfaction at an increase from 5*s.* to 10*s.* in the first instance?—I think not. The 5*s.* fee was introduced in a peculiar way. It was the result of the old system of searching for a mark for any outsider without an application, for a fee of 5*s.* It was really the fee the office charged years ago. Formerly, the office without an application made a search for any applicant, and you could then lodge your papers afterwards if the search resulted satisfactorily on the office stating that the mark was open. But there was this danger attached to that: that the very mark might be applied for during the search or the day after, before the original applicant sent his in. Therefore at once receiving the papers is preferable. There would be no dissatisfaction in paying 10*s.* on application, and 15*s.* on registration. As a revenue question that would be a very important one.—Then I come to the appeal to the Board of Trade on refusal of the Comptroller to register. I think it is not at all unlikely that the system of appeals to the Board of Trade may in the future not be found useful at all, and very likely a reversion to the old system of going direct from the office to the court may result. If so, that fee would vanish altogether.

964. (*Lord Macnaghten.*) Is there much complaint of the delay that is consequent on an application to the court?—Very much so. I come to that under another head where I am going to venture to suggest that we ought to have a trade mark judge, and the trade mark business taken primarily in that court, the trade mark judge to fill up his time with other business.—I find nothing else until I come to No. 17 in the fees, that is for a certificate of registration to be used in legal proceedings; but there my suggestion does not affect the fees, it is simply as to the form of the certificate. I want the certificate to be headed:

M.
E. Johnson, F.S.S.
2 April 1887.

"For legal proceedings" simply; not to have to specify the proceedings as we do now, which, sometimes, when the certificate is wanted for foreign litigation purposes, is extremely awkward. If a foreigner does not supply the information that is required we cannot get the certificate without the specific heading, and sometimes they are in court abroad before we can get the certificate over.

965. (*Chairman.*) What fixes the form of the certificate; what shows what you have to put into it?—It is Form S. in the forms; but there is a rule under which the Comptroller is to require the information before he issues the certificate.

966. It is Rule 57: "The Comptroller, when required for the purpose of any legal proceeding or other special purpose to give a certificate as to any entry, matter, or thing which he is authorised by the said Act, or any of these rules to make or do, may, on receipt of a request in writing and on payment of the prescribed fee, give such certificate, and shall specify on the face of it the legal proceedings or other purpose for which such certificate is granted"?—I should suggest the removal of the latter part, that it merely be a certificate for legal proceedings which can be used in any proceedings here to-day or elsewhere to-morrow.

967. (*Lord Macnaghten.*) Would it hold good for any time?—Quite so, under the seal of the office. It could be so worded.—The next is No. 18. There we come to a serious grievance as to fees: "Certificate of registration to be used for the purpose of obtaining registration in foreign countries, 5*s*." For these certificates, when a mark bears separate numbers by reason of being registered in more than one class, a separate payment is required in each class although it is the identical mark. Actually one mark is registered, but if registered in 40, or even the whole 50 classes, a separate fee is required for each class in which it is registered. Now under the old Act that never arose, because a mark was registered under the same number through all the classes in which it appears (producing specimens).

968. (*Chairman.*) So that under the present system you would need a separate certificate for each?—A separate certificate and a separate fee for each, strictly interpreting the fees. And this carries with it the further grievance that every one of those certificates requires a consular legalisation for foreign countries, which in connexion with France would cost nearly 10*s*. each. Then sometimes there are translations besides.

969. You suggest there should be one certificate only, stating on the certificate the classes for which registration takes place?—I should hardly be so severe on the office as to say it should only have a single 5*s*. fee; I should suggest a 5*s*. fee for one mark in one class as it is now, but that there should be a 10*s*. fee, howsoever many classes, for more than one.

970. (*Lord Macnaghten.*) That would make a considerable difference to the revenue of the office, because I see this gentleman who has registered this double lion covers four or five pages?—Not so, that is a loss to the office now, because he will not register in foreign countries, he will not pay the fees. A single representation could be attached to the certificate with an enumeration of the classes in which the mark is registered and a specification of the goods. I may say, rather as an act of courtesy than strictly carrying out the spirit of the rules, the Comptroller has given me these certificates in several instances lately in one certificate, so that I save all the consular legalisations. I have paid the full fees at the Trade Mark's Office, but in that way have saved 40 or 50 consular legalisations. He has combined eight or nine sheets under the one seal.

971. What do you pay for a consular legalisation?—They vary from 1*s*. 8*d*. to 10*s*. or 11*s*., each governed by its country's own scale.

972. (*Chairman.*) What is the next point on the fees?—The inspection of the register is the next, Rules 21 and 22. The inspection of the register for every quarter of an hour, 1*s*.; and for making a search amongst the classified representations for every quarter of an hour, 1*s*. That, I think, was an unjustifiable arrangement of fees, in the first instance, because the classified representations are a part of the register; the register is simply the index to the representations, and the intention was that you should have for 1*s*. a search extending over a quarter of an hour of whatever is in the office. Now if you want to look at the register, and it takes one minute to simply see a single entry, you pay 1*s*. for that; you have to go into the next room and pay another 1*s*. to see the representation of that mark of which you wished to see the entry on the register. I think the quarter of an hour system ought to be that for 1*s*. you get whatever the quarter of an hour will furnish out of the office records. That would be met by simply making 21 and 22 into one, making it a single fee.—Then the next is as to the Sheffield fees, No. 28. The Sheffield fees in respect of the portion of goods in the class which are covered in Sheffield by application to the Cutlers' Company, have to be paid at Sheffield, and if under the same application, although necessarily in a separate set of papers (because they have to come to London), an applicant asks for the remaining goods in the same class he is obliged to pay a second set of fees. Of course if my principle of sub-division is adopted, I should not be able to complain that there is a separate set of fees for Sheffield and a separate set for London, because that would be the natural sub-division of the class; but if that system is not introduced in other classes, and it remains one single fee for all the other classes, I cannot see why the Sheffield class should be double.

973. Which is the Sheffield class?—I beg to be allowed to correct myself. It takes classes 5, 11, 12, and 13. That is four classes. It is what are termed the cutlery classes.—Then I come to the new fee, the expedition fee; that would be a fee of 1*l*. or 2*l*. beyond the usual fees to be affixed to any application and marked as "expedition" or "urgency," that application to be taken up the moment it reaches the Patent Office, and dealt with out of rotation order.

974. That must necessarily delay the others?—It would delay those which had precedence; but if open to all is that an objection? Let the applicant who attaches importance to his trade mark pay the fee, and let the others go through their own leisurely form. I think you can have more expedition for all the world, and extra expedition, and express rate, for those who pay the fee.

975. There is a point to which our attention has been drawn, I do not know whether you have had any experience of it. A registered proprietor of a trade mark is required to make a fresh application on Form M. in case he changes his address. Such application entails an expenditure of 5*s*. for each registration. The suggestion is that on the payment of a fee of 1*l*. the registered proprietor should be allowed at any time to alter the address in the register?—That he should take a life ticket?

976. Something of that sort?—I have heard of no complaints in my experience so far. Possibly the change of address in connexion with a number of marks might carry with it a reduction after the first. That is the system under assignments, and it might perhaps be followed to meet this case.

977. This complaint comes from Manchester, where it is stated that where there is a change of address and a large number of marks registered, and some firms have hundreds, that 5*s*. a mark necessitated by the change of address is rather a serious tax?—It is; but see the enormous expense they are put to in moving in other directions, in changing their mills, and moving their furniture. It is simply part of the penalty for removing to larger premises.

978. (*Mr. Hutton.*) Suppose you move to smaller premises to reduce your expenditure?—It might be so. I think it might be met in this way in the registration of subsequent proprietors, what we term the assignment of trade marks, the first mark is charged

Mr. E. Johnson, F.S.S.

2 April 1887.

1*l.*, and all marks after the first are charged 2*s.* each, being carried through under the same document. You may perhaps recommend that the change of address be 5*s.* for the first mark, and 1*s.* each for all subsequent marks.

979. (*Chairman.*) What work to the office does a change of address involve?—It involves going to the register, which is the actual index of trade mark owners, noting it there, and also noting it on the address lists which are kept for other purposes at the office, and the application papers.

980. Do they have to note it under each class?—Each class concerned; but in the present system each of those marks registered since 1883 bears a separate number, and would be a separate fee. It would be a sad infliction on the office if under some registration effected in 1876 where under one number a man registered 50 marks the entry of the change of address for the whole of those fifty marks in four books were to be made for a shilling.

981. (*Lord Macnaghten.*) You think there is no complaint about that substantially?—No.

982. (*Chairman.*) You do not deal much with the case where a single firm registers hundreds of marks?—I have had some such; but the Manchester marks of course are exceptional. I do not think in Manchester many registrations exceeds 300. Their applications exceeded that number.

983. (*Mr. Hutton.*) There is one which would have to pay 120*l.* fine?—Ralli's house I think represents perhaps the largest registration.

984. They have 500 marks?—Yes. It might be 1*s.* or even 2*s.* a mark after the first. The assignment entry involves as much trouble, and that is only 2*s.* after the first.

985. (*Chairman.*) Is there any other point to which you would wish to draw our attention?—Many more. There is the question of the application, form F. I have a few words to say upon that. That appears in the rules, page 16. I would ask your Lordship's attention to the user clause at the end.

986. "If the trade mark has been in use in respect "of the goods since before August, 13th, 1875 state "length of such user?"—Yes. That recognises no user even for the purpose of recording except before August 1875. Of course at the time when the first Act came into operation that was naturally the only date that could transpire, and when applications were first received on the 1st of January 1876 none could have a longer user than five months, but now as time progresses that date, 1875, is already close upon 12 years ago.

987. Is not that date only inserted because there are certain rights given if the trade marks have been used prior to that date which do not exist afterwards?—Quite so, but for useful purposes I think a later user might be recorded. I do not see that any objection could be taken to allowing the user, whether short or long, always to be specified when there is any.

988. Why; it gives no rights?—If they were supported by the old form of declaration in every instance see what a useful instrument it would be in connexion with litigation.

989. (*Lord Macnaghten.*) I do not see that. I do not see why a man should not register a mark as soon as he means to use it. Why should a man make an affidavit, which can hardly be tested, stating that he has used this a certain time?—In so many instances marks have been so used. We get marks constantly now for registration which have been used as it were ten years or eight years. Why should an applicant be debarred from placing on record in his registration the fact that he has so used it?

990. Why should you place it on the register if he has not chosen to register it earlier?—It is simply this, that he stands on a level with the man who used his mark only yesterday, or has not used it at all; there is nothing to distinguish.

991. That is his own fault for not registering?—Would you leave that penalty attached to his negligence, and never give him a chance to record that he has used it?

992. (*Chairman.*) I do not see that putting that entry upon his application would give him any additional right in court?—It would discourage groundless oppositions where an applicant applies for a mark on the part of anyone desiring to oppose it, who may just have been thinking of using the same mark, or have used it a week before. When he sees it advertised with no user claimed he thinks he has a better right than the man who has advertised, whereas the advertised man may have had as many years as he has days, and that only transpires afterwards in the litigation. I think the litigation might be entirely avoided in many cases were the user distinctly specified. It is not a matter of vital importance to anybody. It is simply with a view rather of discouraging useless oppositions, in fact groundless oppositions.

993. What is the next point?—As to consents where registered owners are not to be found. A certain proportion of the registered owners are not to be traced any more at the addresses under which they first applied for registration, and there are no means of reaching them or serving them with any notices. They are simply fossil obstructives on the register.

994. Who have very likely given up business?—Given up business; gone away, failed, disappeared under every phase which is possible. Out of 15,000 names a large proportion in every 10 years would go.

995. (*Lord Macnaghten.*) What is done in that case now?—We are at a block. I would venture to suggest that certain discretionary powers to dispense with consents be given. This is rather in the case of consents to registrations where there is a slight similarity. I believe the Comptroller in his evidence referred to the system of consents. I think that certain discretionary powers to dispense with consents should be given to the Comptroller on satisfactory proof when owners of marks conflicting in a minor degree cannot be traced at their last known residences, and that applicants interested might also be required to advertise in the "Times" at their own expense, and in the "Trade Marks Journal." That will bring me again to a legal point which some of our solicitors have once or twice pointed out to me, the difficulty of serving these people with any notices. I think that no doubt some mode of getting over the difficulty when attention is called to it can be devised. Then following upon that closely comes the question of cancellation of any marks wrongfully registered. There ought to be some provision, unless it may be assumed that the court can do anything. I question very much whether the court would take a mark off the register without proof of service in some form on the registered owner.

996. (*Chairman.*) You suggest that where the registered owner is no longer at the registered address, and his address cannot be ascertained, some kind of substituted service, or notice, or advertisement should be adopted?—Quite so; of course on satisfactory evidence.

997. (*Mr. Hutton.*) There is no limit to the period of registration?—Yes, they die out in 14 years, if not renewed. But then for five years the mark is dormant under the Act. For five years no one else can register the same mark that was owned by anybody else during the previous 14 years, so that it is really 19 years; that is a generation for trade purposes.

998. I suppose most of the remarks you have made apply solely to soap and other articles of that kind, not to cotton goods?—In a very limited degree to cotton goods, but to all the other classes, every trade, my experience covers all trades.

999. I am alluding to Class 24?—Simply excluding 23, 24, and 25.

Adjourned to Wednesday, April 20th, 1887.

Committee Room, House of Commons.

Wednesday, April 20th, 1887.

PRESENT:

LORD HERSCHELL. | LORD MACNAGHTEN.
THE EARL OF CRAWFORD. | JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. EDMUND JOHNSON re-called. Further examined.

Mr. E. Johnson. 20 April 1887.

1000. (*Chairman.*) What is the next point to which you wish to call our attention?—I would ask in resuming to-day, with your Lordship's permission, to mention to the Committee that I find on reading through the evidence of the last day it became a little discursive. I would therefore beg to be allowed to commence by reading the suggested heads which I originally prepared for the evidence here. Then I will follow the division into three parts and try to conclude in that way, giving your Lordships afterwards the subdivisions for each heading after I have read the three full headings as they originally stood. The headings were as follows:—Part 1, the administration under the present rules at the Patent Office, of the Patents, Designs, and Trade Marks Act, 1883, so far as concerns trade marks, and suggestions as to how far shortcomings in the same might be remedied under alterations in the practice of the office. Part 2, suggestions as to further useful modifications in procedure which might be effected under new rules. Part 3, suggestions as to what further might with advantage to the commercial community be effected under a short amendment Act, repealing portions of certain sections in part 4 and part 5 of the Act of 1883, and to include *inter alia* a clear definition as to what should be registered as word trade marks. Continuing Part 1, I find my own forther headings run as follows:—"Euphony "and meaning in connexion with word marks." That would be the first point. Next, the official notifications of registration. Thirdly, certificates. Fourthly, descriptive devices. Fifthly, blocks occupying too much space in the Journal. And finally, a little further reference to what I termed the other day, eccentricities. That would be all under Part 1.

1001. Perhaps you had better deal with that before going to Part 2.?—As to the euphony and meaning, I make the following remarks. In dealing with word marks, questions of euphony and questions of meaning arise. Certain words, and particularly those of foreign origin almost identical in spelling, have totally different meanings. Other words, again, of identical meaning of course vary in foreign languages under translation. Some fixed principle should be laid down for dealing with these cases. It is a continuous source of difficulty.

1002. Will you give us an illustration?—In a recent instance the word "Ambrosio," meaning Ambrose, and the word "Ambrosia," which means food for the gods, were both accepted in clause 45, and it was only under an opposition that the earlier claimant prevented the registration of his rival. I have another instance at the present moment not yet dealt with in the same class as between the words "Famosa" and "Formosa," both distinct in meaning, but almost identical in sound. In the future as registration of so many foreign words is likely to be claimed under the recently conferred convention rights, I would suggest for the consideration of the Committee that some rule will have to be laid down for the guidance of the Patent Office in dealing with words of foreign origin. The word "cat" and the word "sack" presented in the nine following languages show a sufficient number of instances of similarity in spelling and under euphony as well with so much variety as might entitle some to be registered in face of others, and thus raising the whole question involved. I take these words which suggested themselves to me, "cat" being really one as to which there is a collision at the present moment. The word "cat" in French becomes "chat," and "sack" becomes "sac;" in German it is "Katze" and "Sack;" in Italian "gatta" and "sacco;" in Spanish "gato" and "saco;" in Swedish "katt" and "säck;" in Danish "kat" and "sak," Dutch, "kat" and "sak;" Portuguese, "gato" and "sacco;" and modern Greek, "κατος" and "σακκος." The difficulty at the Patent Office is that they have no fixed rule for dealing with this question, one presenting a word in one language, another presenting it in another language, whether the question of meaning is to preponderate; and they have to decide whether the second application is to be proceeded with or not, or whether the euphony question is to come in simply to take the mark as it would be pronounced by the purchaser of any goods asking for them under that brand. It really is a difficulty for which they are wholly unprepared. I think it would be necessary to lay down some rule for their guidance.

1003. Take words in any language, do they regard in practice the meaning at all?—Preferentially at the present moment they are regarding meaning rather than euphony, but I certainly think euphony as well should be regarded, because in asking for goods in a shop under a particular brand the purchaser would not spell the word, it would simply transpire as it is pronounced. My own opinion would lean towards the restricting both under euphony and under meaning, to have a double restriction to avoid confusion.

1004. (*Mr. Hutton.*) But if the word "cat" is registered do you mean that they will register the word "chat"?—It is a question under the convention whether they would not be obliged to accept it. The convention rights are exceedingly strong, and can override much of the ordinary practice.

1005. Have we not had a case before us where the word "huntsman" was registered in Spanish, and they refused to register it in English?—I should hope they would do so; I think they should.

1006. (*Earl of Crawford.*) I think there was a case of Cazadore, the Spanish huntsman, and there was another case of a falconer which was considered to be a huntsman?—I have not read that evidence.

1007. Do I understand this case of "cat." Supposing the English word "cat" is admitted, then you say that the German "cat," which is "Katze," cannot be refused under this new arrangement?—Under the convention I question whether on production of the German certificate of registration, assuming that Germany comes within the convention, it could be refused.

1008. That would be the German one. Then take the Dutch one which is also "kat"?—The Comptroller in the case of the Dutch "kat" might possibly say that that was actually identical with a mark already on the register that the "K" and the "C" were so much alike, but the German "Katze" would be some distance from it. The principle must cover

Mr. E. Johnson.

20 April 1887.

the cases where the similarity is slight, where the words in the different languages are identical, and also where they very much differ. What is required is a fixed rule after careful consideration laid down to meet all cases. Another point, taking it a little further, is this:—There is the question of Oriental characters; that has already arisen in a few instances, and is likely to develop very much in the future with the Indian trade. I recently applied on behalf of a manufacturer for the word "Lord" or "Sahib" translated into Hindustani characters, which, on reversing the English word "lord," under the Oriental usage became "drol" in the Hindoostanee character. The Comptroller refused this application, citing against it an anterior one in the class, consisting of some meaningless hieroglyphics totally dissimilar. Surely if "drol" can be claimed as a fancy word in English, and is sufficiently so for registration as the Act now stands, when translated into Hindoostanee it must become more so. "Conqueror" was yesterday refused in view of the word "Victor" being already registered in the same class. That, again, is a question of meaning. The office at present proceeds without any fixed rule under which they are guided. Each particular instance seems to be treated by itself, and really in some instances there are inconsistent and almost ludicrous results.

1009. (*Chairman.*) It would not be very easy to lay down a rule?—It would be exceedingly difficult. I simply throw out the suggestion that the attempt should be made.—Then I come to the official notifications of registration. I will hand to your Lordship the form in use as issued (*handing same to the Committee*). It would be a convenience to trade mark owners if a representation of the mark were affixed to the form. This would give comparatively no trouble to the office if under the rules an additional and unmounted copy were supplied for the purpose, which could be pasted on to the form and impressed with the official seal. I have taken the most inconvenient one I could find to show how that would work (*handing same to the Committee*).

1010. How would you identify this as the mark, simply by attaching it?—By the seal impressing through it.

1011. (*Earl of Crawford.*) It would have to be an embossing seal?—That is the form of seal of the office in use at present. Another, but less effective mode would be to merely affix a cutting from the Official Journal of what had actually been advertised (*handing same to the Committee*). Further, if the goods covered by the registration were enumerated in the body of the form it would become a still more complete document. At present it will be observed how exceedingly bald this notification is, and how very little it states.

1012. (*Chairman.*) I am not quite sure that I understand what you mean by "the goods covered"?—"The goods covered" would mean what the actual registration includes, that the mark as registered is registered in respect of the specified goods.

1013. This is "in respect of goods under class 42," which would cover all the goods under class 42?—Not soin practice, it would merely cover the goods advertised; so that the applicant has now to hold two documents before him to see what his registration is. He must have the Journal in which the actual application was advertised, in which the goods are described, and this notification to confirm the fact that the registration was completed after the statutory period.

1014. I thought the goods were notified for the whole class?—If so registered, but not if registered partially.

1015. I thought you could not register for part?—You register for certain goods in a class.

1016. They do accept a limited registration?—Yes, that is effected under the Act of 1883, at my own suggestion. It was found that an applicant registered for the whole class frequently only wanted certain goods in that class, and yet got all.

1017. "A trade mark must be registered for parti-" cular goods or classes of goods." That is section 65?—Yes. The word "classes" in that sense means descriptions of goods. It does not mean the 50 classes as enumerated under the Act. I think the notification should clearly set out all that is conferred on the owner by virtue of the registration in his favour.

1018. This simply says, in respect of the goods specified by you, and you say there is nothing to show what those goods are?—And the advertisement that appeared in the Official Journal may meanwhile in some cases have been restricted, so that actually, even by referring to the Journal, we do not get it accurately.

1019. In what way restricted?—Restricted under some rival claims after advertising, and which would not be again advertised. I hold that the notification of registration should really clearly set out all that the owner of the mark is entitled to under the registration.—The next point is the certificates of registration. The present practice of requiring copies of marks exactly corresponding with those originally filed to be attached to certificates occasionally presents great difficulty. From time to time as new supplies are printed, certain slight variations in colour, alterations in address, or other trival matters, arise; whilst, when requiring certificates, the original old stock is found to be entirely exhausted, so rendering it impossible to supply the required copies corresponding exactly with the originally filed representations. To meet such cases I think the Comptroller might be authorised to accept the labels or marks in any other form, as in later use, noting the variations beneath the representations attached to the certificate. I lately had an instance where we had to wait three months, until an old label could be found, to get a certificate for registration on the Continent. The office insists that the label attached to the certificate for the foreign registration shall correspond in colour, paper on which printed, and in every detail with the original filed copy.

1020. It must correspond in respect to the design, must not it?—Absolutely in the matter of the design undoubtedly, but a trivial alteration by being on a different coloured paper, or something that appeared in red being now printed in blue, or a new address on the label would cause a difficulty.

1021. Would not it be an advantage to get rid of the colours in the registration altogether. Colours are no part of the registration now, are they?—They are no part so far as limitation is concerned; but in infringement cases where matters of "get-up" are involved, I think the original filed copy in the colour actually used is frequently of very great value.

1022. The evidence we had before us from Manchester rather tended to show that the differences of colour tended to conceal similarity and rendered it more difficult to observe similarity where similarity existed?—That might be so in some cases of tickets—the Manchester corner piece tickets.

1023. In some cases the two designs looked very different because they were differently coloured, but when you took the colours away and looked at the designs themselves the similarity became apparent; and of course the colours being no part of the registration as soon as the registration was obtained he might colour it as he pleased?—There are cases arising (I have one at the present moment) where the similarity between the two marks is shown clearly between the black, as your Lordship remarks, but they are totally different directly they are in different colours. Here the second is being allowed to register with an undertaking never to use the colour of the original applicant.

1024. There is no provision about that in the Act. Under the Act when once it is registered the person who has the design registered may use any colour he pleases?—Clearly so. The intention always has been that.

1025. Then there would seem to be a great objection to looking at the colours in considering whether you are to register or not?—And yet for foreign registration purposes they hold us to corre-

spond exactly with the original English registration. Without further consideration I should hardly venture to express an opinion as to how that would operate in some foreign countries. If we were simply to lodge a black impression here and register for black only, and use our label abroad in colours, we might jeopardise rights.

1026. You doubt whether the foreign country would recognise it as the same design if registered black here and used in colours there?—Yes, and afterwards varied in colours. I think the foreign country certainly would be against us in infringement cases in holding it to be an imitation.

1027. However, it might be met by requiring that although the person registered in any colour he pleased every applicant for registration should be required to submit his design in black?—He does that practically, except in the Manchester Marks, when he tenders his block for advertising in the Journal.

1028. (*Mr. Hutton.*) Take this design (*Liebig's Corned Beef Wrapper*); it is not intended to use that in black and white?—No, that is how it appeared in the Journal. He uses the label in the coloured form as shown in the large size, and he furnishes the block in that form for the Journal when it is advertised.

1029. But when it comes to registration in the office you must put it in those colours which are intended to be used?—The filed copy must always be followed. If Liebig now wants a certificate for registration in Spain or Germany he must furnish to the office coloured copies exactly corresponding with those which he first filed for the registration in this country.

1030. (*Chairman.*) It does not seem perfectly clear that he must do so if the colour is not to be treated as part of the device or design. It does not seem so clear that when he asks for the certificate he may not be entitled to the certificate without the colour?—The office holds that he must. There is no rule on the subject; it is simply a matter of practice.

1031. (*Earl of Crawford*). Is that a matter of practice according to foreign notions, or is it only laid down by us. Is it to carry out any foreign regulations?—It is a regulation of our own office, but I think wisely followed, so far as the foreigner is concerned, so as to protect our manufacturer when his mark is infringed in the foreign country.

1032. (*Chairman.*) Of course if the applicant desired it they would give him the certificate with the facsimile of the design in the colours; but it does not follow that if he desired it he might not be entitled to a certificate with the design in black and white. Of course, whether that would serve his purpose in the foreign countries or not is his own concern?—The office at present would absolutely refuse such ac ertificate. In one case I found that where it was an absolute impossibility to furnish a coloured label, and it was shown to the office, they did oblige us by following the suggestion your Lordship has just thrown out, but it was quite exceptional. This might simply be met by giving a discretionary power to the Comptroller.

1033. Do you think there is any one from whom we could obtain information as to the view in which a trade mark is regarded, so far as relates to colour, in foreign countries?—I have correspondents in every country, generally the most able men in each, mostly barristers occupying the highest positions. I will put the question to them and report to the Committee. I think it has incidentally arisen under a foreign correspondence, but not in such a form as I should take to be a carefully considered opinion to hand to your Lordship.

1034. There is no witness in this country who would be likely to be able to give us the information?—I do not think there is anyone. I think I may say, without any vanity, I am the best informed on foreign trade mark law.

1035. It would be of service if you could obtain for the Committee some statement as to how this matter is regarded in foreign countries?—I will, in the whole of the European countries would be sufficient perhaps?

1036. Yes?—How many points would your Lordship like me to include?

1037. The colour is the one which immediately suggests itself, how far the colour is there regarded as a part of the registration, or whether registration in any one colour gives the right to the device in every colour, that is the immediate point?—I would perhaps venture to suggest to your Lordship that in taking this opportunity of making an inquiry in the leading countries, we might tabulate a small series of questions; if there are other points on which the Committee would like to be informed, perhaps Mr. Roscoe would take your Lordship's instructions and give me a few other suggestions.

1038. They may suggest themselves as we go along?—Certainly. I would include America. One gets an answer very rapidly from the United States, and our counsel there, Mr. Rowland Cox, is a man occupying the very highest position, and who has given a life study to this question. They are so very enlightened in their views and in their decisions.

1039. We had better reserve that probably until we have communicated with the Comptroller, because there may be some points on which he would like information as to the foreign practice?—As your Lordship pleases.

1040. Perhaps you would think over the matter yourself as to any suggestions you would make with reference to points upon which it would be desirable to obtain information?—I will.

1041. (*Mr. Hutton.*) It might be desirable also to add the colonies; they have a different law?—They mostly follow ours. They generally pass the British Acts the following year in the leading colonies. I may say with regard to the Cape and the whole Australasian seven practically it is our own law. Canada is more independent.—The next point I have is as to descriptive devices. It being admitted on all hands that descriptive words should not be registered, perhaps some restriction should be placed upon the registration of devices when descriptive, emblematically, of the goods to which applied. For instance, should one representation of a bullock be registered in connexion with extract of beef; a coil of wire netting for wire netting; a block of black lead so well remembered in connexion with the dome case; the representation of a hinge for hinges; a castor for castors; a cowl for cowls; a ventilator for ventilators. All these are actual registrations which have come under my own notice. I think them rather of a mischievous nature. Surely no registered owner of the representation of a ventilator can say that other ventilater makers are not to illustrate their catalogues by showing the ventilators they make. Of course the restriction which could possibly be claimed would only be to use the representation associated with the word trade mark; but should such a registration at all be entertained? I think not.

1042. (*Earl of Crawford.*) The registration of the individual case would cover the goods of all descriptions?—Wherever the article claimed to be covered by the trade mark is actually represented by what is tendered as the trade mark. If I am a chair manufacturer surely I have no right to claim a chair as my trade mark, and so to annoy other chair manufacturers when they represent the chairs which they make.

1043. (*Mr. Hutton.*) But they would not register an article as a trade mark?—A representation of it. They registered the device consisting of "the cowl" for the cowls, and "the ventilator" for the ventilators.

1044. (*Chairman.*) You say these cases of the hinge and ventilators are actual cases?—These are all registrations effected. I took those all mostly from one class. They are nearly all in Class 13. This is by no means an exhaustive list. This was in a few pages. Some are claimed as old marks and some as

Mr. E. Johnson.

20 April 1887.

new.—Then as to blocks occupying too much space. The insertion of blocks in larger sizes than necessary, more particularly when merely consisting of type matter, uselessly blocks the Journal against the insertion of a larger number of smaller blocks. If within the discretion of the Comptroller, under the latter portion of Rule 27, such blocks should be refused; if not within the scope of the real meaning, a limitation might be included when making fresh rules. I ask the Committee's attention to the marks appearing in the Journals Nos. 468, 470, and 474, all of which, besides as it happens being questionable trade marks, occupy unnecessarily large spaces. (*Producing same.*) Here is one in which there is a third of the Journal page wasted.

1045. (*Lord Macnaghten.*) It is within his power now to direct the dimensions?—This would then be under the present practice merely to remind the Comptroller to exercise the power conferred on him by Rule 27.

1046. (*Chairman.*) It is such dimensions as may be from time to time directed. It seems to contemplate some general direction from time to time as to the limits of size. There have been no such directions I understand?—No directions. There is simply the notice on the form that the block if exceeding 2 inches involves extra fees for the space so occupied. That rather encourages an applicant to exceed the necessary space. The Treasury gets 2*s.* an inch, for what I imagine costs them 6*s.* or 8*s.* The 2*s.* fee cannot cover the cost. It gives extra prominence to an absurd mark, and keeps so many good marks out until the following Journal.

1047. You say the 2*s.* is less than the cost of it?—Seriously under it. I am not in a position to say how much under, but seriously under. These people are led to believe that they give their registration an increased value by the prominent space it occupies.

1048. (*Earl of Crawford.*) They consider it in point of fact as a good advertisement in a good position in the paper?—At 2*s.* an inch involving a Government loss!

1049. Then there is no practical reason why they should not have the whole of that page?—There is nothing to prevent them if they tender a block for the whole page unless the Comptroller exercises the power of restriction. The Comptroller exercises his power freely when a block is sent in not sufficiently clear in the matters of detail and when it should be shown larger to give the public the mark in a very distinct form.

1050. (*Chairman.*) It is rather doubtful whether this does apply in all cases, because it is only in cases where the nature of the trade mark requires a greater space than 2 inches a charge of 2*s.* per inch shall be made?—Clearly not.

1051. Is there any charge made for excessive breadth?—No; breadth is given. Consequently this man has only exceeded the 2 inches very slightly if he has exceeded it at all, and he has got all this for nothing probably. I question whether this exceeds 2 inches. In that case he is not really paying anything. It was supposed the breadth would regulate the length. This is an abuse. Large blocks should be restricted to where the necessity of the word and the design requires more than ordinary room. Otherwise they should be rejected. He ought not to have an option of taking a whole page or half a page if it could be condensed into less.—I come now to one or two more of the little eccentricities. That brings me back in the first instance to the possessive question. I produce a label trade mark, "Watkins and Son Pure Mineral Waters." It is refused in that form; on amending it by putting the apostrophe it is accepted.

1052. (*Earl of Crawford.*) Why did they refuse it the first time?—On account of the want of distinctiveness.

1053. (*Chairman.*) It is said to be distinctive because it declares that it is the mineral waters of Watkins and his Son?—But how does the section cover that!

1054. (*Mr. Hutton.*) The word registered is "pure." That is the distinctive word?—He simply wants to protect the label as a whole, and he applies to register that label in the form in which he was originally using it without the apostrophe and that is refused; the apostrophe and "s" are added, and, following the system under which we can register Pink's jam and Crosse and Blackwell's pickles, or any phrase which embodies the possessive, the application is then passed.

1055. (*Chairman.*) This in fact would prevent any Watkins and Son at Hereford selling their mineral waters under their own name?—Which perhaps ought not to be the result, unless we can go so far as to say that the first Watkins who registers his name in connexion with mineral waters, and so acquires the phrase, "Watkins' Mineral Waters," is to throw the *onus* on all future Watkins of distinguishing themselves from the original one by putting their full Christian names, and describing themselves in such a way as never to be mistaken for the original. It is Burgess's case in another form. This is another case, Liebig's Extract of Meat. In view of the decisions in the Law Courts with regard to the name Liebig in connexion with extracts being *publici juris*, the Comptroller has required in connexion with this particlar label and several others that the applicants should disclaim to this extent:—"The Applicants do not claim any right "to the exclusive use of the word 'Liebig,' the said "word being commonly used in the trade concerned "in the goods to which the mark is applied." Now I hold that disclaiming the word "Liebig's" in this particular instance, in fact in taking it out from their registration, is varying the name of their company. The company would then read "Extract of Meat Company, Limited." Surely the original Liebigs are entitled to their own name in connexion with their own goods, and on the labels which they have used from the commencement. By registering this label as a whole they are getting no exclusive right to the word "Liebig" beyond what they may or may not possess. Why should the office really attempt to exercise a power to which clearly they are not entitled?

1056. You mean nobody in consequence of this registration would be prevented from selling Liebig's Extract of Meat or anything advertised as Liebig's Extract of Meat unless they used the device of a bull in connexion with it?—Certainly not, unless they infringed the trade mark as a whole. They are entitled to call anything Liebig's Extract which they manufacture under the Liebig formula which is given to the world, but it does not give them or the Patent Office the right to ask the Liebig Company to actually withdraw the name "Liebig" from the full title of their company.

1057. (*Earl of Crawford.*) They having been the people who introduced the matter into notice?—Exactly; with all others simply following them.

1058. (*Mr. Hutton.*) There is one here "Liebig Company's"?—That one has been passed at an earlier date, before the Liebig case was finally dealt with under appeal. That is an older registration.

1059. (*Chairman.*) The Liebig Company took proceedings, did they not, with a view to prevent anybody but themselves using the name "Liebig" in connexion with extract of meat?—Yes, the proceedings were in that form and they failed entirely, as Liebig's formula was given to the world and the extract was made in Germany, although only on a very small scale before they commenced. There is no doubt they are the original company, and Liebig's own nephew is now their principal medical director, as the original Baron Liebig was in the first instance.—Another eccentricity we have in connexion with the words "John Bull." "John Bull" was applied for by one manufacturer in four classes, it is accepted and advertised for him in three classes and rejected in the fourth, because the name John Bull is found as the name of a person in some court guide. Why this person should not be aggrieved in the whole of the four classes if he is to be in the one I am at a loss to understand. I take it that John Bull is one

of those typical and peculiar expressions under the guise of a name that quite removes it from the ordinary character of the name of John Brown or William Smith. The representation has been passed.

1060. Do you mean that was at the same time or different times?—At the same time included under the same series. He is passed for manures and medicated articles coming under Class 2 but refused for medicines in Class 3.

1061. On an application made at the same time?—Made at the same time. I am afraid that it may possibly be that at the Patent Office the examination being effected by different officials and perhaps not reviewed after being effected, without any fixed rules laid down for the guidance of all there, and the same views not being taken by the whole staff, may account for many little eccentricities.

1062. Those four applications would be dealt with at the same time by the same person, would not they?—One would think so.

1063. Have you looked to see whether in the class in which it was refused there was any previous John Bull registered?—No; I have argued it at the hearing before the Comptroller and failed.

1064. (*Lord Macnaghten.*) Was the John Bull in the Directory a dealer in medicines?—He is in the Court Guide and not in business at all; I have not pursued this question of eccentricity any further.

1065. (*Chairman.*) You come now to the second subdivision?—Yes. Suggestions as to further useful modifications in procedure which might be effected under new rules. Following that up, I will rapidly run through the rules. The first point is the certificates of registration for legal and other purposes. This was referred to incidentally in my earlier evidence. By the Indian Penal Code Act, No. XLV., 1860, infringement of trade marks is protected under severe penalties. There is not, however, yet any system of registration in India, although the attempt was made some time since to legislate on the subject. It would be a convenience to British manufacturers trading in India if they could place in the hands of correspondents a certificate showing what marks have been registered in this country. There is no provision at the Patent Office under which such a certificate can be issued.

1066. Do you mean that you could only obtain a certificate of your own mark?—You can only obtain a certificate of your own mark and for specified purposes. You can only obtain the certificate at the Patent Office for the purposes of legal proceedings and for the purpose of obtaining registration in a foreign country to be specified. In all cases the certificate is only issued for the specific purpose mentioned, and the purpose simply to exhibit in India could not be recognised by the Comptroller as coming within the category.

1067. Do you suggest that upon payment of a certain fee you might obtain a certificate for any purpose?—For any purpose. I suggested the other day that certificates for legal proceedings should be in general terms so as to meet all proceedings. I am now inclined to recommend that a certificate on a much broader basis might be issued without at all mentioning legal proceedings, so being a useful document for any purposes outside legal requirements, and meeting the Indian question just mentioned. A certificate of this nature would be a useful extension of the official notification of registration to which I have already referred, being under the official seal and with full particulars. In practice, I think, were such certificates issued, trade mark owners would much prefer to frame them for their own office use, and at their branch establishments rather than as now is the case, display the very bald official notifications they receive. A legitimate source of new revenue would be thus created under the 10*s.* fee payable for each such certificate, and in all cases the preparation of certificates would involve less trouble at the office than now is the case when inquiries have to be made as to the specific proceedings, &c. for which certificates are required. In India, in taking proceedings under the Penal Code it is necessary to prove that the mark is the property of the complainant, and that of course occasionally presents a little difficulty to an agent taken unawares, and having to institute proceedings on behalf of his principals in England off-hand. If those agents were in possession of such a certificate as I suggest, showing each mark that is registered, they would instantly have at hand the whole of the evidence they require. In Manchester I am sure such a certificate would be very much approved for transmission to India.

1068. You would allow a person to get a certificate of other people's trade marks besides his own?—No. It would be the applicant only; the owner of the mark would apply, and he would send it to his own agents, to his correspondents.

1069. I thought you were suggesting that he should be able to send to his correspondents other people's marks as well as his own?—I merely meant his own. I used the word "correspondents" in the sense of agents or consignees.—Then next I have the heading "Trade Committees." Many questions of trade usage, common terms, common emblems, &c., and as to limitation of rights in the respective classes, might effectively be dealt with by the appointment of committees of experts for each class of goods, with consultative powers. The Patent Office could not fail to find much support under the guidance of such committees; and the applicant for any registration that failed under the ruling of the Comptroller, and with the approval of the committee concerned, would scarcely ever be likely to carry his case further. The committees as proposed might be nominated officially or periodically elected by the already registered owners of marks in each class. This would really be an extension under a limited form, so far as concerns the giving advice, of the Manchester system and of the system of the Sheffield cutlers. It would be introducing for other trades a system of supervision and taking part in the registration matters in which they are best qualified to give an opinion.

1070. The nomination would create difficulties, would it not; it would be likely to engender jealousy and indisposition to accept the decision or advice of the committee?—I think not. It might be got over by the Board of Trade nominating, say, half, and the trade mark owners themselves might by ballot papers or otherwise elect the other half.

1071. Do you think there would be practical difficulties in getting that election carried out?—Not at all.

1072. Do you suggest that all the owners of marks in the particular class should have a vote?—In electing a committee for chemical manufacturers I would give the Board of Trade power to nominate half of that committee, say, five to be nominated by the Board of Trade and five to be nominated by the registered owners in that class, letting them vote proportionately to the number of marks each firm has registered.

1073. You suggest a committee for each class, and you have already suggested an increase in the number of classes by further sub-division; would not that involve the creation of a great number of committees?—I think not. The committee of a large class would still be one body sub-divided into sections to meet the sub-divisions; for instance, in the class of fermented drinks it could be a committee consisting, say, of four brewers, four distillers, and four large wine importers, and they would sit as a committee of the whole 12 for questions concerning the whole class, and sub-divide themselves in each instance into a committee of four for what only concerns beers, spirits, or wines.

1074. (*Lord Macnaghten.*) It would be a very onerous duty to cast upon such gentlemen, would it not?—I think I could find some of them willing to serve, and I think they would take a little pride in it, and it would create an interest in the whole working of the trade mark law, which would smooth over many difficulties.

1075. How much time do you suppose would be

Mr. E. Johnson.

20 April 1887.

required? Take the case you mentioned just now of fermented drinks. Would one day a week be enough?—It would not require so much. The Committee would not really need to meet at fixed periods after all questions of principle were settled. They would only need to meet when anything special had to be considered. That would be when certain claims arose in connexion principally with old vested trade usages; and the leading men in a trade can give valuable evidence, and settle questions amongst themselves far better than the courts, or in fact any officials could.

1076. (*Mr. Hutton.*) Has the Chamber of Commerce in London taken up this question?—Merely, I believe, in connexion with tobaccos. They have been moving in trade marks in tobaccos, but I think in nothing else. Their secretary invited me to work conjointly with them some time since, but we never devised a working plan.

1077. They do all their work through trade committees?—Entirely so, and very successfully.

1078. You would suggest a trade committee?—I think it would be better to have such committees in communication direct with the Patent Office and the Board of Trade rather than to give it to the Chambers of Commerce and let it pass round all over the country. I merely throw out the suggestion for what it may be worth.

1079. (*Chairman.*) It would be a matter of some expense, would it not?—Not at all. The committee could meet in a room at the Patent Office.

1080. I did not mean their meetings; I meant the election?—I would undertake personally to cover that by voluntary subscription from those concerned; that there should be no expense to the Government, and I should not be indisposed to take the position of honorary secretary to summon the committees and keep their records in proper order.

1081. You think it would be practicable?—I think it would be practicable and useful, and certainly would give great satisfaction not only to those who are on the committees, but the smaller men in a trade would feel satisfied if their interests were being watched over as between the Government and themselves by a committee of their own body.

1082. (*Earl of Crawford.*) There would be rather a difficulty, I suppose, in the event of the Government office feeling obliged to go against the recommendation of the committee, would there not?—Before coming to any final decisions under that head no doubt there would be ample discussion. The committee could be asked to meet the Comptroller or the Comptroller to meet the committee. I am sure the Comptroller himself would feel his hands strengthened by having such a committee to refer to, because in dealing with individual applicants he would be able to say "your own "committee agree in the view taken at the office."

1083. (*Chairman.*) Do you think there would be likely to be much danger of collision between the view taken by the committee and the view which the Comptroller would take?—I think not under fair argument. On the contrary, either the Comptroller would convince the committee or the committee the Comptroller. There are certain questions of fact into which the Comptroller never can properly inquire, and which would be known to these gentlemen on the committee who had devoted their whole lives to the particular trades in which they are engaged.

1084. Are there any other points with reference to the rules?—I would ask your Lordship now to take the rules. Under "Forms;" on the first page I would refer for a moment to the new form with the "user" clause, which was mentioned the other day, but which, I think, hardly met with the approval of the Committee, to specify the user of a mark, however short that user may have been; that is if not a mark dating back to August 13, 1875. I am still strongly inclined to urge that the applicant should state his user whatever the user may be on the forms, and that he should do so by the old form of declaration, not a mere bald statement that the mark has been used, because then we should have greater care displayed in the way in which the claims are made. Every applicant making a claim which he could not substantiate would know that his rivals in trade could afterwards call him to account, and that it really would be a matter of perjury if he failed to establish the user.

1085. I am not sure that I quite understand what advantage you think would be gained by the statement of the user?—I am looking to it as a question of time. A mark used on the *14th* August 1875 is already now a mark of nearly 12 years' user, and although the applicant may have hitherto neglected to register, still his user exists.

1086. That date was fixed because those who had the use before the date got certain rights under the Act, but I do not quite understand what advantage a man gets, or how it matters whether he has used it for six months, or a year or two years, before the time of his registration under the new Act?—The more enlightened legislation which has taken place in the interval is partly an answer to that. The limit of August 13th, 1875, shut out any "fancy" word brought into trade from that moment, but as the Act of 1883 again admitted fancy words to registration, and has also removed other restrictions in connexion with new marks, the original reason for establishing the limitation has partly disappeared.

1087. Still I do not understand; how does it benefit a man, if when he registers, he says, I have used this since 1883, 1884, 1885, or 1886. What difference does it make?—It prevents another manufacturer from opposing his registration under a belief that he was the first to use it, although he may only have used it two years later. An opposition is lodged to an application merely on the face of what appears in the Official Journal, and without any knowledge of the detail in connexion with that mark; therefore if I apply for a mark at the present time, which I have used for the last 10 years, when advertised in the Journal, there is nothing to show any opponent that I did not only begin to use it yesterday.

1088. (*Earl of Crawford.*) Can you claim for the past 10 years although you did not protect it?—You cannot now, but you can when it comes into litigation when carried into court to settle the rival rights between the parties. The older applicant will fail if the more recent applicant had an earlier user, whereas the original applicant will succeed if the opponent has not so old a user.

1089. (*Chairman.*) That will not depend on the declaration which he made?—Would it not assist it very much in having it recorded, and in justice to the opponent also?—By the applicant at once admitting what his user is, the whole ground is made clear for all future litigation in connexion with that mark.

1090. You mean that if you permitted the applicant to state the number of years during which he had used it and permitted that statement to be published in connexion with the application, you might prevent persons rushing into fruitless opposition who would have imagined that they had used it first, but for seeing how long the other party had used it?—Just so; and also you would in the earlier stage before any litigation arises have fixed the applicant to a truthful declaration as to what his user is. He could never afterwards get beyond the user that he first claimed.

1091. Do you suggest that in every case the applicant should state the length of user or merely that he should be permitted to do so?—Either way, but I should prefer it compulsory. I should be satisfied to have it permissive if I could get nothing more, but I should prefer it to be compulsory and to revert to the old declaration. I do not see why so important a statement as the user of a trade mark should be dealt with in the very perfunctory way in which it is dealt with at the present moment. It is merely that the applicant has used this mark for the last 50 or 60 years, as the case may be, and that is signed off-hand by an agent. I think so serious a statement ought always to be supported by a declaration.

1092. Is there any such statement now made?—In connexion with the marks where there is an old user. I myself signed for an applicant a few days ago claiming a user of 80 years. I have no knowledge that that 80 years user is genuine. Of course there is no responsibility, because I am covered by a letter so specifying it from the applicants; but ought so important a statement as a claim of 80 years' user in connexion with a valuable trade mark to find its way into the Patent Office merely under an agent's signature? All that is put under the present form is a foot-note, "If the trade mark has been in use in "respect to the goods since before August 13th, 1875, "state length of such user."

1093. In those cases you would require a statutory declaration?—A statutory declaration in support as we had under the 1875 Act.

1094. Might that create some difficulty as regards foreign registrations under the convention?—I think not, because they come in with their own certificate which establishes all their rights. Under the convention we accept nothing except supported by the foreign certificate which is retained at the Patent Office.

1095. You would require as to what we will call the old trade marks a statutory declaration instead of the present statement, and you would add to that the requirement of a similar declaration, either permissive or compulsory, in the case of new trade marks?—I would; wherever there is a user I would record it.—I need not further mention the sub-division of classes. I think that was fully dealt with.—Also, the individual trading as a firm I think was fully dealt with. That would come in under Rule 10, the suggestion in connexion with the Form F.—I see nothing further in the rules on the following page 5, except the appeal to the Board of Trade, which I shall refer to when I come to the Act.—Rule 27, in regard to blocks, I think is fully dealt with.—The alteration of the statutory period under Rule 30 from two months to one month was suggested. The inspection of the register was dealt with. I see nothing more under the head of rules.—I now come to Part 3, that is, suggestions as to what could be effected under a new short Act. I first take section 62, appeals to the Board of Trade. These appeals are considered anomalous, being, in fact, an appeal from the operation at the Patent Office of the rules or instructions to the identical authorities by whom such rules and instructions have been issued. I think it would be preferable to revert to the old system of going direct from the Patent Office to the court, and let this be open to any applicant when prepared to incur the attendant costs. As far as I am aware, hitherto, trade mark owners have had no grounds whatever for complaint, every facility having been afforded by the Comptroller, and the utmost courtesy accorded at the Board of Trade whenever appeals were carried there; but a day might arrive when this would be otherwise, and I accordingly would ask the Committee's serious consideration as to whether the Board of Trade should not be relieved from the responsibility of exercising so arbitrary a power as that given under this section, the full operation of which was so clearly expounded in the judgment of Mr. Justice Chitty in the "Normal" case.

1096. Have there been many appeals to the Board of Trade?—I should think 30 to 40.

(*Mr. Roscoe.*) 25 or 30.

1097–8. I suppose the appeal to the Board of Trade is a more expeditious and more economical procedure than the appeal to the court?

(*The Witness.*) Certainly it is most economical. If the applicant attends personally it really involves no cost at all but the preliminary fee.

1099. (*Mr. Hutton.*) Who hears it at the Board of Trade?—I think the secretaries at the Board of Trade, with the aid of the law officers, if they require them.

1100. (*Chairman.*) I suppose the Secretary to the Board of Trade would always be present?

(*Mr. Roscoe.*) Always.

(*The Witness.*) Mr. Boyle has taken very much interest in them.

1101–2. (*Mr. Hutton.*) I suppose it is not expensive?—It is no expense at all if the applicant attends personally.

1103. Can he be heard?—I think there is no restriction.

(*Mr. Roscoe.*) We do not hear counsel, but solicitors.

(*The Witness.*) Then the next matter to which I would refer is section 63, which says: "Where re-"gistration of a trade mark has not been or shall not "be completed within 12 months from the date of the "application, by reason of default on the part "of the applicant, the application shall be deemed "to be abandoned." I think notice should be given before this section is put into operation. A notice should be sent in the first instance to the agent giving 14 days to pay the fees and complete the application; and in the event of the agent not acting, the communication should be repeated direct to the applicant, again giving 14 days; the section also might be made permissive instead of compulsory. It now reads: "the application shall be deemed to be "abandoned," it might read: "may be deemed to be "abandoned," and the office would have the discretionary power to put it in force or not. I know two instances where registrations have not been completed entirely without the knowledge of the applicant, where an agent appropriated the fees. The applicants had seen the marks advertised in the Official Journal and believed that that was registration. They knew no more, and subsequently, years afterwards, it was discovered that they were never registered, and that meanwhile this section had been put in operation and the applications cancelled. One particular case I am obliged now to take into court on account of a conflicting mark having meanwhile come on the register, although the original applicant was in front of the one which now impedes him. The agent had never completed it, and the house believed themselves always registered until they came to me, for a further registration, when I immediately referred to their old applications and found that they were not completed, because the final fees were never paid.

1104–5. (*Chairman.*) They had supplied the fees to the agent to complete the matter, but he had misappropriated the fees and not completed it, and there was no remedy?—He had disappeared. He had appropriated the fees. We have never been able to trace the extent of his delinquency, because it is only one by one as these investigations arise that the circumstances are discovered.

1106. The difficulty would have been prevented if your suggestion had been carried out, because the agent would first have had a notice, and if then he had not completed it, the applicant would personally have had a notice informing him that the matter was not completed, and that unless completed within a given time the application would be deemed abandoned?—Quite so, and the applicant would rather have paid the fees 100 times over than be unregistered. It was a very important Liverpool firm dealing in provisions, the name is Bancroft. — I come now to the terrible section 64, which will take us a very considerable time. Your Lordship will remember the suggestion for the word-marks that I ventured to offer, which would read thus ": A distinctive device, mark, brand, "heading, label, ticket; or any word or words fanciful "or otherwise (in any language), provided that such "word or words be not inherently in any way des-"criptive or qualitative of the goods themselves to "which applied or to be applied, or in common use "in connexion with such goods." That brings me to the question of the added matter.

1107. Before you come to that I should like to ask you with reference to the first sub-section (*a*), "A "name of an individual or firm printed, impressed, or "woven in some particular and distinctive manner," do you advocate that remaining as a mark that might be registered?—I look upon it as of very little value

Mr. E. Johnson.

20 April 1887.

indeed, there is so little arising under it. It is found impossible for practical purposes for manufacturers to avail themselves of that particular clause, except in the case of Manchester goods, where there are some marks woven in the fabrics, but as a general rule traders find this sub-section (*a*) quite useless. Of course it does no harm to any one.

1108. It is conceivable that you might print the name of a firm in a distinctive manner?—I endeavoured to do it in the first instance and wholly failed at the Patent Office. I remember sending in the name of a cigar manufacturer where all the upstrokes and downstrokes of the letters were composed of cigars. This section was new to us, and I thought surely that would be sufficiently distinctive, but they refused it. It is very difficult to say what shall be distinctive in the form of printing. New type letters might be claimed as a particular fount is introduced, but later on that would be superseded by a fresh form of letter, and then fail.

1109. You, however, do not think that the sub-section does any particular harm?—I have not seen any harm under it. I have seen it so little worked. The signature section (*b*) is of course most valuable and works exceedingly well.

1110. You were going to refer to the added words?—Yes. The exact status of what is placed on the register under this section should be defined, and some limitation enforced as to what should be accepted under the head of additional matter. The registered owners in many instances, under wrongful information from patent agents, are misled; in fact, led to believe themselves by registration the owners of exclusive rights which in fact are quite illusory. I would instance those large spaces that were shown to the Committee a little while ago, the words "stop ache" and others. What applies to all new fancy words before the Act of 1883 now applies to words for which registration is still refused and unfortunately equally so to words registered but subsequently discovered to be bad as trade marks when tested in the courts under proceedings to restrain infringements. In this way I find very appropriate some remarks under this head contained in the paper I read at the Society of Arts in 1881, on the first five years' working of the Act of 1875. There I say, "So great a hardship has "the public found the restrictive definition of a trade "mark that every conceivable device is resorted to "with the view of obtaining the much coveted right "to use, and if possible to protect, fancy names as "trade marks. A vast number of word registrations "have been effected in many classes, the system most "frequently adopted being to combine the desired "word with the signature of the applicant. In use, "such words sometimes appear conjointly with the "signature, then, of course, corresponding with the "full description on the Register; but, in many in-"stances, the fancy word is all that it is desired to "use and claim, and the signature is omitted." The question arises, "To what extent are fancy words "protected when so used alone? Upon this point "the decisions of the court will be most anxiously "awaited when the question is tried. The word is "on the Register; fees in respect of it have been "paid, the Act has allowed it to be added to the "essential portion of the trade mark, viz., the *fac* "*simile* signature, but has not distinctly specified "whether in being so added it acquires the same "protection as the signature, or as any trade mark "distinctive and complete in itself; whether, in fact, "it is at all such a portion of the trade mark as can "be protected. Against this it must be noted that "under the Act the signature is made the essential "particular, the addition of a word or combination "of words being merely permissive. The question "comes to be whether the registration protects the "combination or only the essential feature. This "has to be answered in all cases. The importance "of the interests involved cannot be over-rated, and "of this the columns of the newspapers afford ample "evidence. Take one industry alone, that of the "new temperance drinks. In connexion with these "it is of paramount importance to obtain a distinctive "name, and to identify the same with the particular "article to which such name has been first applied. "Although some of these drinks are patented, it is "only under a distinctive name that they can be "identified by the public. Does registration of the "name of a particular drink, in combination either "with a device or the signature of a firm, give the "owner of that drink a right to restrain another who "may sell a beverage under that name manufactured "by himself, the beverage being distinct from that "originally patented? Take for instance the words "'Hedozone' and 'Zeodone,' which are not old "trade marks. It is, I apprehend, sufficiently signi-"ficant of the necessity which exists for further "legislation on the subject of trade marks, in which "capital to the extent of, perhaps, millions of pounds "sterling is involved, should exist. If the legislature "did not intend to accord protection to the letters, "words, and combinations of letters, which may "be registered as ancillary to the essential portions "of the trade marks, is not the legislature misleading "the public, and, in fact, permitting registration fees "to be paid in respect of a protection which is not "given? The statistics on this subject show the "value which the public attach to the privilege of "being able to acquire rights in words. Selecting "seven classes in which word marks are most pre-"valent, I find that out of a total of 5,573 marks "applied for in such classes, as large a proportion as "1,336 consist of word marks. If in the particular "industries comprised in these classes word marks "have in the past proved the most suitable, why "should the Registration Act incidentally hamper "such trades in the future by restricting them in "the use of such marks? The introducer of a new "brand of iron, &c. is at a disadvantage since August "13th, 1875, as compared with what was open to him "at any preceding time. Words are registered, in "combination either with signatures or devices, in "many classes. Of such registrations there are but "very few indeed in which any value is attached by "the owners to the device, or the *fac simile* signature "registered in combination with the word. The "registration of the signature or the device becomes, "in almost every instance, a mere subterfuge, and "various manœuvres are resorted to for obtaining "this much desired, but very questionable, privilege "of placing fancy words on the register."

1111–12. That was written before the Act of 1883?—The Act of 1883 was, I may mention, to a very great extent, based on the suggestions contained in that paper.

1113. Now there can be no question that a fancy word, if it be really a fancy word, may be registered alone and acquire its own full effect independently of any name of the firm or signature of the firm in connexion with it?—Quite so; just as any word in use before August 1875. But the difficulty we have to face now is what is a good fancy word. I shall come presently to the effect of decisions in the courts, showing that the trading community is in such a state of uncertainty that at the moment there is not the least possibility of knowing who has and who has not a good trade mark. So far as I am aware, every word mark that has been tested in the Appeal Courts has failed. I do not know a single instance of anyone being upheld. Then in section 65 the word "classes" I would suggest should be "descriptions." Classes of goods is apt to be misunderstood as applying to the 50 classes into which merchandise is divided under the rules.—Under section 66 there is a provision for the registration as a series under varying terms, of labels that contain different statements of names of places, statements of price or numbers, or the names of the goods themselves. The series is registered by advertising in the Official Journal one label under each particular form in which the manufacturer uses it at the time. This has the effect of registering all the labels used to-day by the applicant, but makes no provision for any new article that he

may introduce under the same label to-morrow or a week after without going through the whole process of re-registering. I think that should be met in some way by giving a right in registering under a series to vary in any further form without any additional registration.

1114. (*Mr. Hutton.*) Suppose somebody else has registered in the other class or in the other form?—No one else can have registered; the later applicant would be refused his form of label. The variation I propose would never affect any essential particular in the mark. It would simply be that if registered say, for mixed pickles, the change could be made to gherkins or onions. If Crosse and Blackwell were to register mixed pickles, gherkins, onions, piccalilli, and were to introdfice some new article for which they wished to use the same label, they should be covered under the old registration for that particular article. In fact I take it that the original registration is somewhat weakened by the limitation.

1115. (*Chairman.*) Somebody might in the meantime have registered the same mark or a similar mark in relation to this other matter?—They could not, because under the sections of the Act such an application would be refused. The mere name of the goods to which the label is applied forms no essential particular in the trade mark, and the general label itself would be the property of either one applicant or the other. Both could not hold it. The second would be a colourable imitation, calculated to deceive, and so refused.

1116. Where all the goods are under one class?—I have a label here which would serve to illustrate it (*producing a label of Keiller, Dundee*). The words "lemon drops" appearing in the centre here might be "ginger" or "peppermint," and that would be the class of variation which section 66 is intended to meet. In other cases it would be the number of yards or quality of the cotton. Under the old Act I take it the registration of "lemon drops" would cover "ginger drops." There was no occasion for section 66, which I think complicates it. The object of introducing it, I know, was for the purpose of obtaining the foreign certificates. We get the certificate in the exact form in which a trade mark owner here wished to register abroad. Clearly, under section 66, when tendering the different forms in which the mark is used, there is a limitation to those forms, there is no extension, there is no power to go beyond.

1117. If he put "ginger drops" instead of "lemon drops," nobody else could use this label with ginger drops on it?—Certainly not.

1118. What advantage does he get by any further enactment, if he gets the full protection now?—He can have "ginger drops," and he can have "peppermint" drops to-day, if he register those under section 66, but if next week he introduced some other drops, those drops would not be covered in the same way that the drops he registered before were.

1119. Would not they be covered if nobody could use the label by putting "ginger drops" on it?—Certainly, and that is why I think section 66 was not necessary, but as we are using it to a certain extent, and so protecting certain forms of variation in a label, I think we ought to go one step further, and in doing that provide that we are not limiting ourselves to those.

1120. I want to see how protection would practically be shut out. If John Keiller and Sons, of Dundee, have registered "lemon drops," and nobody could use that label and put "ginger drops" without further registration, then why is not he protected as much as if he had another enactment?—I consider that he is. It is simply that if we register for him in the six forms that he is using to-day, and if he introduces two new forms a week hence, is there any possibility that he is at a disadvantage with regard to these two, as compared with the previous six. I hold that he only originally wanted one.

1121. What is the practical disadvantage, I do not quite see it. If nobody else could use it without being liable to him any more than if it were one of the six registered ones, how is he at a disadvantage as to the other two?—I do not think he is, as a matter of law here, no court here would justify an infringement by a mere variation of the name of the article sold. He might, in a particular foreign market, have a trade in the 7th or 8th article, as just mentioned, which would not be on the English register, and he could get no certificate here for the registration abroad, although that might be the particular one which is only wanted there. If he were registered in blank with a claim to vary, he should be covered in all respects.—Section 67 is one that we have referred to already. It is that "a trade mark may be "registered in any colour"; That, I think, should also have "or colours" in the plural, because labels are prepared in composite colours, a number of colours. "Colour," in the sense of the section, might strictly be interpreted as being all in one colour.

1122. It has not practically been so interpreted?—The Patent Office have not taken it so, but I think in any amendment Act we might make it absolutely clear so that it should read: "A trade mark may be "registered in any colour or colours," and the same at the end of the sentence: "Shall confer on the "registered owner the exclusive right to use the "same in that or any other colour or colours."—Section 69 provides, "Any person may, within two "months of the first advertisement of the application, "give notice in duplicate at the Patent Office of "opposition to registration of the trade mark." I suggest to reduce that period to one month. That is a point to which I called attention before, and I would omit the word "first." There is but one advertisement, therefore there is no first. Then, again, under the sub-section 2, "Within two months after "receipt of such notice or such further time as the "Comptroller may allow, the applicant may send to "the Comptroller a counter statement." The two months might be one month.—I then come to section 70, which provides for "the assignment of a trade "mark only in connexion with the goodwill of the "business concerned." That, of course, is a principle that has always been from the first accepted in trade mark legislation. But I would ask the Committee's attention to clause 87 in the general part of the Act, where, unfortunately, trade marks have been included so that licenses to infringe can be granted. Trade marks should have been omitted from that section.

1123. Is that so? Section 70 requires that trade marks, when registered, shall be assigned only in connexion with the goodwill. Section 87 provides for the case where a person becomes entitled by assignment to a registered trade mark. Now no person could become so entitled unless it were assigned in connexion with a goodwill, could he?—Would the latter portion be governed by that, "the person "for the time being entered," because that would not be the assignee, would not that be the original registered owner?

1124. It would strike me that that provision only related to the person whose name was on the register, that it treated him as the person having the right to make such an assignment as the nature of the registration permitted. I do not think it could enlarge his power so as to enable him to assign contrary to what the Act expressly provides. It only says that such assignment as can be made in connexion with the particular matter registered may be made by the person whose name appears on the register, unless there is something on the register to show that his powers are limited?—The reason I raise the question is because I am aware that some such licenses to infringe have been granted. I have, myself, had applications on the subject.

1125. You say that there has been an impression that section 87 did, to some extent, control or rather extend the powers conferred by section 70?—I am aware that such licenses have been granted. I have

Mr. E. Johnson.

20 April 1887.

refused to be concerned in them in any way myself, but I know that they have been prepared by others.

1126. (*Lord Macnaghten.*) What sort of licenses?—A license to use the trade mark for a consideration.

1127. I suppose that only means that a person who is legally entitled to the trade mark binds himself not to take proceedings against the other?—It goes a little further than that. It is giving him the right to use it; not merely an undertaking not to take proceedings to restrain, but it is really selling him the right to use the trade mark; it is selling him the use of it.

1128. (*Chairman.*) Selling it him apart from the goodwill of the business?—Entirely apart; in fact, carrying on a competing business only in a different part. A man in Manchester will have granted a license, say, to a man in Sheffield.

1129. (*Mr. Hutton.*) And he takes a fee for it?—He takes an annual fee, a rental.

1130. (*Earl of Crawford.*) In what does that prejudice the public?—It subverts the principle of trade mark legislation, which has always been that the mark and goodwill shall be inseparable, because here clearly there is no goodwill; there is actually open competition.

1131. Supposing this were not done for a monetary consideration, would there be anything against the law in it in that case?—For love and affection, perhaps not, except that the rights of the owner in his mark might be jeopardised in any infringement proceedings he took where this would be brought against him in evidence, and I think he might be held to have destroyed his own trade mark.

1132. (*Chairman.*) That would be his own look out?—I am aware that these are very peculiar points of great nicety.—I would say one word in connexion with section 71 in favour of the old trade mark owners, which would also apply to section 72. Section 71 says: "Where each of several persons claims to be "registered as proprietor of the same trade mark, "the Comptroller may refuse to register any of them "until their rights have been determined according "to law, and the Comptroller may himself submit, or "require the claimants to submit, their rights to the "court." Here there is no distinction whatever drawn between the old owner and the new owner; in fact, the book is as it were closed against the old owner through the coming into operation of this Act. Certainly, there are not a great number of old marks still coming in for registration, but there are various reasons for which occasionally an old mark has still been unregistered and where it comes in in this way late claiming registration. I think the late Master of the Rolls' old rule of admitting up to three might occasionally be reverted to. At present nothing can be done under that except by going to the court. Of course formerly the Comptroller had the power to take up to three. I know this opinion of my own is not generally shared in. It is considered that the old mark owners ought all to have come in for registration by this time, and that any who have not have really forfeited all claims to further consideration. I should not press it.—Section 73 I do not understand. It says: "It shall not be lawful to register as part of "or in combination with a trade mark any words the "exclusive use of which would, by reason of their "being calculated to deceive or otherwise, be deemed "disentitled to protection in a court of justice, or any "scandalous design." I cannot make out the word "exclusive" in it.

1133. (*Earl of Crawford.*) Does it not mean that the use of such a word by itself would be calculated to deceive?—Would that be in describing anything as being something different from what it really is.

1134. (*Chairman.*) I am not sure that it does not mean words which as descriptive of something to which all people have a right in common would by registration (which would give a person an exclusive right) be calculated to deceive, such as some of those you have referred to?—Or is it intended to touch such cases as where the word is claimed for a trade mark in connexion with any particular goods, where it might be held not to be descriptive of the goods but really to be deceptive in the opposite sense to descriptive, such as calling black white or white black, and still that there could be a misunderstanding as to the application. I am not at all clear as to what is intended.

1135. It is all governed by their being "deemed "disentitled to protection in a court of justice," so that you have first to consider what would be deemed disentitled to protection in a court of justice. No question has arisen upon that subject?—No question. I believe the general impression is that it is unintelligible, therefore it has not been possible to test it in any way. I tried to find a meaning for it by bracketing and removing the word "exclusive." It certainly looks better without it. It controverts section 64 as to the added matter, because there is no restriction as to what may be registered as added matter, and yet this creates a distinction, because it says: "As "part of or in combination with." Under section 64 you are entitled to add anything. If this means any particular exception it should have been included under section 64 as an exception to the added matter.—The next section is section 74. That is the heavy section involving the disclaimers. I think the permission to disclaim portions of devices should be extended to new marks. It would save considerable trouble in the working at the Patent Office if that could be permitted, and I do not see that any possible injustice could arise under it. At present the practice is to omit such features, registering with a blank space and afterwards using the mark in the entire form as originally tendered for registration. This position is unsatisfactory, because there is always the danger if the mark is carried into court that the court may hold that the applicant is not using the mark in the form in which he registered it. But absolutely that is beyond his own control, because the portions omitted from the registration the office forces him to omit; and although in use by him at the time and ever since, yet his registration and the use of the mark do not correspond, and that from no fault on his part but merely the fact that the portion of the mark which the office refused did not appear in the Official Journal.

1136. But why do they refuse it?—It may be a device that is in common use as provided for under the section and allowed in connexion with old marks. In connexion with old marks the disclaimer may extend to "Any distinctive device, mark, brand, "heading, label, ticket, letter, word, or figure, or "combination of letters, words, or figures, though the "same is common to the trade in the goods with "respect to which the application is made," but it is not so with the new mark. There was a case lately in court as to a tobacco label which had in the centre the arms of Castille, Nathan Newman, I think, was the name. The label had been applied for originally in the complete form with the arms. The filed copy at the Patent Office had the arms in it, but simply crossed through and omitted from the advertisement. When this case was carried into court, the mark being infringed, the defence set up was that the mark was not the mark that was registered, that they were using quite a different label, a label with the arms in the centre. It was said "you have registered something "without any arms in the centre although you used "the label with the centre." There was a very strong disposition on the part of the court to listen to the objection, but finally it was overruled. By allowing in this case the mark to be registered with the disclaimer, and then always insisting that the disclaimers should be specified in the advertisement in the Journal and that the public see really what is claimed as exclusive property and what is not, a case of this kind would be completely met. It will simply require one word added to the section. Then if that could not be done under this section I went so far as to draft what might be taken as a suggestion for a short clause to meet such a case, which would run in this way:—"When from any cause under the pro- "cedure at the Patent Office registration shall have

" been refused for any portion or portions of a label " or other trade mark, the rights of the owner of such " mark, provided he is not disentitled to the use of " the portion or portions of the mark so refused, shall " in no way be prejudiced by his use of the label or " trade mark in its entirety as originally tendered for " registration." I think if we could have an additional section in the next Act providing for this it would be even more useful than a mere admission of the principle under what is allowed to be disclaimed as for a new trade mark. It is a case that will be constantly arising in future and should be met. In respect of the question of the rights of old owners up to three I find (looking at sub-section three of Clause 74) that it is recognised indirectly in the latter portion by describing a mark as common when it is in use by four. That is still tacitly recognising the old principle of taking the marks up to three. I mention that in no way as suggesting any alteration of this section, but merely in support of the suggestion that the old mark owners should be recognised up to three as hitherto.—Then in section 75 we come to "Effect of registration." It says:—" Registration of " a trade mark shall be deemed to be equivalent to " public use of the trade mark." The interpretation of that I believe is that after the registration has been effected, registration dating from the time of application and not of registration, the public user of the mark will be recognised as from that date. I think it would be a very valuable alteration if that could be extended a little further by adding the words at the commencement " Application for registration," because that would create a user for the applicant as from the date at which he applies before he gets it registered. Now it is only created as from the same date, but after it is registered.

1137. I do not quite understand what difference that would make?—It would make this difference. An application may be pending for a year at the Patent Office. There may be an opposition to it. There may be little difficulties with the office or something which prevents the registration being completed, and all that time the applicant could never say that he has a user; and many applicants prefer not to use a mark practically in trade until registered, so that they are at a disadvantage in any opposition if any new man spring up who says he meanwhile has been using the mark while the original applicant has not used it.

1138. Does the registration date back to the application?—It dates back to the day of application, but that is only operative when the registration is completed. Meanwhile, the applicant has nothing, but if his user were to date from the application instead of from the registration by statute, he would have a user as from the date when he first applies, and would be able to claim that user during the progress of the registration.

1139. If the registration dates from the application does not the section which provides that registration shall be deemed equivalent to public use of the trade mark treat the public use as beginning at the date of registration, which is the date of application?—Yes, but only from the day when he has registered. When he has actually registerd, he has his user from the day that he applied, but during the long interval between the application and registration he has nothing. I want to cover the period from when he first applies.

1140. He is covered retrospectively if he succeeds in his registration?—Only if he succeeds, but he may be involved in all manner of proceedings before he succeeds.

1141. (*Lord Macnaghten.*) He cannot take proceedings until he is registered?—Certainly not, but proceedings may be taken against him.

1142. Proceedings can only be taken against him by a person who is on the register?—Certainly, so far as trade mark law is concerned, except at common law.

1143. (*Chairman.*) I do not quite see how you could protect him prior to his registration, when he never may become registered at all?—He never would acquire the legal user under the section unless he is registered, naturally so.

1144. I am not sure that I understand your point. He now applies; if he succeeds in registration, his registration dates from the date of his application, so that he is protected from that date and he is deemed to have had a public user from that date. I do not understand what more he could get than that?—Your Lordship means what more he could get during the interval.

1145. Yes.

1146. (*Lord Macnaghten.*) Which is the section which antedates the registration of the application? Is it in the Act or the rules?—I remember it very well in the 1875 Act, and I think it is somewhere in this Act too. It is in Rule 32, in a parenthesis.

1147. Has that question ever been tried?—I never remember it being questioned in any way.

1148. It has been questioned, because it is a very serious question how the Board of Trade could antedate registration by the rules?—It is an exceedingly serious question, as to when the 14 years are to expire.

1149. Which is the section giving the Board of Trade power to make rules?—Section 101. The rules are laid on the table of the House, and then they become a portion of the Act.—The next is section 77: "A person shall not be entitled to institute " any proceeding to prevent or to recover damages " for the infringement of a trade mark unless, in the " case of a trade mark capable of being registered " under this Act, it has been registered in pursuance " of this Act, or of an enactment repealed by this " Act, or, in the case of any other trade mark in use " before the 13th August 1875, registration thereof " under this part of this Act, or of an enactment " repealed by this Act, has been refused. The " Comptroller may, on request, and on payment of " the prescribed fee, grant a certificate that such " registration has been refused." The certificate of refusal under this section is limited to the circumstances specified. There is no provision for a new mark that cannot be registered. There should be some exception in respect of old marks in varied forms with additions. The certificate of refusal has always been regarded as a very bald instrument; in fact, I do not think that it is accepted in any foreign countries for registration purposes. They absolutely refuse it. An owner of a trade mark here, which may be a very good trade mark, although by the operation of our Acts incapable of registration, is in the unfortunate position that he cannot register abroad although he really holds what is a good trade mark there, provided he only could produce a certificate of registration in the country of origin. I have not carefully considered whether the convention will give any extra rights under this head, but I am afraid not, because all that is expressed under the convention is always based upon the certificate of registration in the country of origin. I think our certificate of refusal might with some consideration be so modified as to make it acceptable abroad for registration, because at present the light in which it is viewed by the foreigner is a most unfavourable one. They immediately consider the mark must be a bad one, and that the production of a certificate of refusal is condemnatory of the mark, not that it was a mark which by some unfortunate provision of our Acts was incapable of registration, but a mark which the owner was not entitled to maintain his rights in.

1150. (*Earl of Crawford.*) The certificate of refusal should contain the grounds of the refusal?—I think the name is unfortunate, "Certificate of refusal." It carries with it really the view that the mark is an improper one rather than an unfortunate one.

1151. (*Mr. Hutton.*) Then what is the value of a certificate of refusal?—The value of it here is that in law proceedings it is tantamount to the certificate of registration. It is accepted by our Acts as showing that you are entitled to take proceedings in respect of the mark, although you are not a registered owner.

Mr. E. Johnson.

20 April 1887.

1152. On a certificate of use?—Yes; we should certainly endeavour to give the certificate of refusal a more palatable name and a more palatable form. I am not prepared to-day to offer any suggestions as to what amendment might be made. I will consider ti if the Committee think it of importance.—There is nothing more under Part IV. of the Act, because all other questions involved in connexion with that have already been treated under rules or office practice. I would merely call the attention of the Committee to the fact that sub-section 12 of the "Sheffield marks" clause provides that the appeal is to the Comptroller instead of to the Board of Trade. I have no doubt that was advisedly inserted at the request of the Sheffield authorities.—In Part V. I come first to that question in section 87, which has already been mentioned. Under section 91 the powers given to the Comptroller for rectifying slight errors I think might be slightly extended, to the extent certainly of revising a claim by reducing it. I do not not think after an application is once lodged there should be at the Patent Office the power to enlarge the claim in any way, but I think there could very safely be given to the Comptroller, similarly as he can correct any clerical error, the power to reduce a claim.

1153. (*Earl of Crawford.*) To admit a disclaimer?—More than that. If a claim were made in respect of five or six different goods and under some circumstances of communications between other parties concerned it were necessary to remove one section of those goods, I think the Comptroller might effect that without any necessity to go to the court, or make a serious matter of what really affects no one.—I see I have a few remarks on section 75 which I seem to have passed over. This is on the registration being tantamount to user. The courts have always held that "user" must be upon or around the goods, that is in bodily connexion with the goods themselves, either impressed or in some way affixed to the goods by label or otherwise, and that unless such user could be proved exclusive rights in the mark could not be upheld. In face of section 75 should this still be so? As the registration is there admitted to be tantamount to user would this old restriction which has been imposed by the courts seem by statute now to have disappeared? I look upon the section as the first step to breaking through the restriction, and if so why not advance one step further and recognise user, even if only under designation in lists, advertisements, circulars, or any other printed matter having reference to the goods and to the trade mark adopted in connexion with them.—Then I come to a rather important suggestion quite outside the Act, which would involve some little thought in framing a section to meet it. It is for the simple deposit of labels or other printed matter *qua* copyright, not including anything of the value of a trade mark, and this could be effected under a system which would involve no examination at the Patent Office, but merely the issue of a certificate of the nature of that granted at Stationers' Hall. This certificate would have to bear on its face an explicit indication that the label is not a registered trade mark, as otherwise much abuse might result. Under a moderate fee the deposit, which would also serve as a useful record of user at the date deposited, would be more than self-supporting to the office, as only classifying, indexing, and pasting down into books, would be involved. The office would affix one copy of the label to the certificate, and return it to the applicant. To this department could be carried some of the curious registrations now being effected under the head of trade marks. These little labels, strictly speaking, are not trade marks in themselves, but still the owners attach a value to them and they would like some system under which they could say: "My label is deposited and protected, and you must not copy it."

1154. (*Chairman.*) What protection would you give to the label thus deposited?—Simply their rights at common law, if they chose to exercise them, no trade mark rights. It is a system which I am sure would be very largely approved of by the manufacturers here. It would be simply following, to a great extent, the American system. They have it at Washington, but it is restricted to natives. Foreigners are not allowed to avail themselves of it. They term it "copyrighting a label." If your Lordship thinks anything of the suggestion I would work it out a little more fully. Here I have simply shadowed forth what the result would be.

1155. You think there is a demand for some arrangement of that sort?—A very large demand. I am constantly asked, "Can I protect *this*; can I register "*this*?" in respect of labels which contain no distinctive element, and which, of course, cannot be registered under our Act. Firms using a large variety of labels would like to protect each one in this way.—Next I come to the effects of decisions. It is unlikely that as the result of his legal training any judge on the bench can estimate the serious effect involved to a manufacturer upon the decision by the court that the trade mark under which his business has been built up was originally disentitled to registration. Not only from that moment can the legally defunct trade mark be openly infringed by all comers to the pecuniary loss of its originator and a decrease of his business, but his reputation suffers under the application of the mark to inferior goods which, at least, for a long time in foreign markets, would always be regarded as his brand. Beyond this, he is forced to adopt a fresh mark, always involving awkward explanations to customers; and unless most carefully advised in the adoption of such fresh mark there is again the risk, years hence, of finding himself in the same position as now. In no way can this be met, so far as I see, except by refusing registration to whatever cannot be maintained as valid in the courts of law, or what is a far more simple remedy, settling by statute a broad definition which will leave nothing, or the nearest approach thereto, to be questioned in the courts. I will only mention two or three decisions by way of illustration of the lamentable condition of the commercial community at the present moment as between their real and their supposed trade mark rights. I will take first the recent decision in the "Gem" case. This word alone in most instances, but in a few others with name of goods in connexion therewith, and in one or two instances with devices, has been registered from time to time in Classes 6, 12, 15, 19, 32, 42, 43, 44, 47, 48, 49, and 50. I have not searched the cotton classes. I think they are not taking words now. On an application for its registration in respect of guns in Class 19, under an opposition, Mr. Justice Kay held, incidentally, that the mark was a fancy word not in common use, and ordered its registration. The opponents carried the case into the Court of Appeal, where it was held that the word was not a fancy word because it had become descriptive of a particular make of air gun, and therefore, as applied to such, was not a fancy word. If this decision is followed the result will be that so soon as a trade mark has acquired sufficient notoriety to fulfil its real object, to distinguish the owner's goods, it is to cease to be a trade mark at all, and that it should not have been registered; whilst if previously registered it can be removed from the register on the application of the first infringer who has the courage to apply to the court. Lord Justice Cotton in his judgment in this case stated that under the modern usage of the word "Gem" it had practically ceased to be a fancy word, his Lordship having, after leaving the court the day previously, found a couple of dogs spoken of in a newspaper as "Gems." That transpires in the judgment. Mr. Cutler has been kind enough to lend me the proof of the Patent Office Journal as it will appear (*handing the same to the Chairman*). What I particularly wish to point out to the Committee under this particular case is that a decision in one class has this dreadful result of jeopardising and leaving in a state of doubt the whole of the marks in the other classes which include the same word, there being so much

uncertainty as to the views the court would take in each particular case, that is whether these dogs would render the mark a bad one in all other classes, as they have done in connexion with the guns. Next I will take the "Jubilee" case. A sad confusion prevails in regard to this unfortunate word in its trade mark history, by reason of certain registrations having been completed prior to the ruling of the Board of Trade, that the word was to be regarded as inadmissible. Such ruling was upheld by Mr. Justice Chitty in refusing to grant an injunction in the case of Towgood *v.* Pirie in December last, reported in Volume 4 of the Patent Office Reports. At the present moment a firm is advertising that they have obtained an injunction, but I have not succeeded in obtaining any particulars of it. I think it is unlikely that any injunction has been granted. I wrote asking for particulars, and received no answer. It may possibly have been a consent injunction. Of course, one is bound to assume that the position of the registered owners of marks in this condition is simply that if any other manufacturer adopts the word Jubilee, infringement proceedings will always be met by the motion to cancel the registration. I believe that eight of these registrations have been effected, and nearly 30 further applications actually advertised, whilst a very large number of applications were proceeded with prior to the ruling as above. The Committee will gather how different industries are affected by cases of this kind if I hastily run through the particulars of the applications. This (*handing up a list*) refers to the word "Gem," and this (*handing up another*) is a sheet with reference to the Jubilee applications that were proceeded with before the decision that the word should not be taken.

1156. (*Mr. Hutton.*) Has it been registered?—Jubilee is registered for eight and advertised for 30. It was applied for, I think, by some 300 or 400.

1157. (*Chairman.*) There might be a different consideration as regards "Jubilee" and "Gem." I am not expressing any opinion as to the propriety of the decision with regard to the word "Gem." "Jubilee" would appear to be open to some objections in this respect, that it is really descriptive, on the common understanding just now, of a particular date or particular time?—Quite so.

1158. By registering that, a person might prevent any one else from putting Jubilee year or anything of that sort as the date of their goods?—I think it was a mistake ever to accept any application under it. The only grievance of which the public are justified in complaining is that so many applications were received and dealt with before the question was properly considered as to whether any should be received at all. The result is perfectly justifiable, but it ought to have been arrived at earlier.

1159. (*Lord Macnaghten.*) With regard to Arbenz's application, the "Gem" case, the judges appear rightly or wrongly to have held and come to the conclusion that at the time when Arbenz applied for registration, "Gem" as applied to guns, denoted a particular form of gun, and was a well-known term?—It was well known to this extent in connexion with Arbenz's guns.

1160. Lord Justice Cotton says, "In my opinion "it shows that at the time of the registration the "word 'gem' had become descriptive of a particular "form or pattern of air gun." If that is so you would not quarrel with the decision, would you?—The evidence scarcely justified that. If that conclusion could be arrived at of course one could not say a word against it, but the evidence was simply the infringement by the opponent himself and those acting with him, that is, the people whom he had supplied with the guns.

1161. That is the ground of the decision, and that seems to me to be perfectly right?—Yes, certainly. A decision on those grounds could not be questioned.—The next matter raises the geographical question in connexion with whiskey. I should remark that with regard to whiskies the system, dating back to no one knows how far, has always been to adopt geographical terms. There are on the Register nearly 500 marks for whiskey, all more or less including the geographical element of "Glen" and "Loch" or commencing with "Dew of" followed by the designation of the special places adopted. "Ben Ledi" is a case which is not yet fully reported except in one of the Wine Reviews. "Ben Ledi" is the name of a mountain in Scotland and was registered in 1885 for Scotch whiskey. Last month, under proceedings in Mr. Justice Chitty's court, an order was made for expunging the mark from the register. This in itself may seem a trivial matter, but when one considers the system under which the whiskey trade is conducted it ceases to be so. The claim to registration of geographical words in connexion with whiskies has always been recognised, and even more recently, until the "Melrose" decision was given, had justified the Patent Office in still accepting words which in all other trades they were excluding. I think this is so serious a matter to the whole of the distillers that if possible their rights should in some way be recognised retrospectively, as otherwise the whole of the trade will be thrown into a state of chaos so far as concerns their trade marks. At the present moment there might be nearly 500 motions in court for expunging valuable marks from the register, in fact destroying the whiskey trade altogether. Some of our temperance friends may say that is a very proper course. The marks referred to are, strictly speaking, the brands used in the whiskey trade and as such are of the highest value. The trade in its export business has been built up under this system of geographical brands. I sent into the city and obtained this yesterday afternoon (*producing a sale catalogue*). Those are the sales at the present moment showing how all these whiskies are offered in bond actually in some instances without any manufacturer's name at all, simply under the trade mark brands. Then in the same way I will take the opportunity also of referring to the question of brands which I raised the other day when I mentioned the Australian papers. Here is one under which again all goods are shown without any manufacturer's name. (*Producing a specimen.*) These are known simply by the brand. It is on the strength of these trade usages that I claim we should have increased facilities at the Patent Office under the head of "brands." I might illustrate it in another instance. These are the trade marks in Class 10, horological instruments (*producing a volume of the classified collections in the "Trade Marks Exhibition"*). Here are the words "Ansonia clock," that is the name of the village where the Ansonia Clock Company carry on their business. That was accepted in 1884 before the geographical restrictions were imposed. When the Waterbury Watch Company came to register, under the geographical ban, although the Waterbury company owned the principal portion of the parish called Waterbury, which was nothing but a few farms before they built their works, I could not register for them, and was obliged to combine a device and monogram and all manner of contrivances to get the word "Waterbury" on the register at all, the abstract word "Waterbury" being inadmissible. Remarking upon these cases I would say that with registration open to all who seek it, and the English language embracing, as Professor Max Muller recently stated in one of his lectures, about 250,000 words, a fair proportion of which, under an extended definition of what may be registered, would become eligible 50 times over in the 50 classes for trade marks, there would always be an ample choice without resorting even to foreign languages. If in this way competitors in each industry are satisfied to allow to pass all the marks they see advertised (and through the trade journals there is now greatly increased publicity given to the marks advertised in the official journal) who outside each trade needs the parental care of the courts? A gunpowder manufacturer is not concerned in the marks registered for sauces or pickles. If then all other gunpowder manufacturers have no objection to the registration of the word mark advertised in the name of a brother gunpowder manufacturer, and traders engaged in the other 49 classes

Mr. E. Johnson.

20 April 1887.

into which merchandise is divided are in no way concerned, the whole mercantile community calls for no interference; there remains then only that private portion of the public not at all engaged in commercial pursuits and their interests are merely concerned in knowing that when they ask for goods of a well known manufacturer they are not suffering deception by having a forgery palmed off under a trade mark falsely representing the original. Why then should we have any limit with regard to words such as "Gem" for instance? Trade mark owners should be the best judges of what is most to be sought under registration, and on this basis legislation should merely be directed to regulate and protect rights, and in no way to restrict. I find a very good reference to this on page 57 of Sebastian (*handing same to the Committee.*) "In many cases the trade mark consists not "of a newly coined word but of a word or a com- "bination of words already in common use, but which, "for the purpose of the trade mark, is or are used "and applied in a manner quite different from the "ordinary use and application, so different that it is "seen at the first glance that the word or combination "of words is or are being used quite out of the "common signification and in the nature of a fancy "name designatory of the goods." Then I have two little American extracts from Rowland Cox. One is in a case of *Newam* v. *Alvord*, before Justice Daniels. "Any member of the community whose in- "terests and business may be promoted by doing so, "should be at liberty to apply even names and words "in common use to the products of his industry in "such a manner as to indicate their origin or parti- "cular manufacture, where such application will not "intrench upon and will be in no way included in "their use by the public. By doing so the rights of "no member of the community can be in any manner "infringed, and no public inconvenience whatever can "be occasioned by it. The public will still be left at "full liberty to use such words or forms as they used "before, while for a special purpose a new office or "purpose may be imposed upon them." The other is a short one from Justice Shepley, another American case, "Words or devices may be adopted as "trade marks which are not original inventions of "the one who adopts and uses them. Words in "common use may be adopted if at the time of adop- "tion they were not used to designate the same or "similar articles of production." That is going even farther than has been suggested here. Now I would ask permission to read to the Committee an extract from a manufacturer's complaint, "Sheet of "the 'Times' with trade mark decision duly received "with my thanks. This case is merely reversing "others, and so the miserable game, and also seriously "expensive game to the trade mark owners, goes on. "The judges and solicitors are like blind men leading "the blind, but with the difference of being well pro- "vided for by those they are misleading. Our so called "trade mark system is a thorough disgrace to us, ruin- "ous to the man of small means, and not just to any of "us. If the subject as to trade marks dared be "brought before our masters at the Patent Office "and Board of Trade by reference to their treatment "in America and Canada, perhaps the lesson might "be useful, but presumably we should disdain to "follow such practical systems; we English can bear "a good deal of mismanagement, and then set about "altering in real earnest. I hope the time is near at "hand, and that you will lead the way. My small "help will be given with pleasure at all times."

1162. (*Mr. Hutton.*) From which we gather that the more you legislate for trade the worse it gets? —The writer of the remarks just read has spent upwards of 1,500*l.* in registrations all over the world, and 500*l.* or 600*l.* here in litigation.—Now I come to the important suggestion as to which I threw out a hint before, about having one judge for trade mark business. The Act of 1875 required considerable interpretation, and the most important decisions under it were obtained from the late Master of the Rolls, to whose court the Trade Marks Protection Society and myself took most of the leading cases with Mr. Justice Chitty (then Mr. Chitty) as our counsel. The earlier practice was then settled by the late Master of the Rolls. The decisions obtained have since been regarded with the utmost respect, and generally have given every satisfaction to trade mark owners. Varying views more recently have been taken by the judges in the courts below and in the Appeal Court, more particularly so in respect of word marks. Whilst the uncertainty which thus prevails as to the validity of many of what are deemed to be most valuable trade marks continues, no manufacturer is safe, as at any moment if dragged into court as defendant by way of motion to cancel his registration on the part of the defendant in any infringement proceedings which in self defence he is obliged to take, until actually confirmed in the possession of his trade mark he is in no better position than the owner of a doubtful patent who has not fought out and maintained his rights in his invention. In the future, if all trade mark cases were, by the direction of the Lord Chancellor, to be referred to the same judge, whilst the public time would be saved in dealing with such cases under the increased experience, such a judge would gain, having special knowledge of detail, the great advantage to litigants would be that their cases would promptly be brought into court, instead of as now, even when motions, standing over from week to week, and if going to hearings from term to term, especially in cases where there are witnesses, and the trying of which extends over several days. A trade mark judge would primarily give attention to trade mark cases, his court always being open to other business when so permitting. Should a fresh definition as to what may be registered as word trade marks be adopted it would be an advantage to trade mark owners if cases under the new Act were referred from the commencement to the same judge instead of taking their chance in the various courts under the present system. —I have just observed a memorandum as to variation clauses. I should have referred to this when we were discussing section 66. It alludes to a practice at the Patent Office which is considered of great benefit to traders, but which does not seem to me to be sufficiently justified under the Act or the Rules. I see no provision under which it is being done, and it is of so much value that it is necessary if possible in any new Act to cover what has been done as well as what would be done in the future. I do not know how to deal with it retrospectively. It is this: Where a manufacturer is concerned in various goods in the class, each of which is included in his label, or otherwise, according in each instance to what the article contained in the bottle, or package containing the goods, may be, it has been customary for some time past to accept for registration the label or even a word mark consisting of a name in the possessive, and denomination of the goods in one particular form, with a clause at the foot of the form specifying that in use the word denominating the goods would be varied by the substitution of the name of other goods included in the class to which the mark may be applied. This practice not being provided for so far, as I am aware, under the Act, or the Rules, and a large number of valuable registrations having been effected under it, and many being in progress at this moment, I would suggest the advisability of its being fully covered in some way, so that there may be no risk attaching to these registrations if at any time questioned in the law courts. I see it is on this very form which I brought up to your Lordship before, about the lemon drops. Section 66 distinctly provides that fees are to be paid, and copies lodged of each variation under which the mark is claimed. Now here we are really doing more than the section allows, not paying any extra fees, and simply carrying through the office at the foot of the form. I am afraid that is *ultra vires.*

Adjourned to Saturday next, at 11 o'clock.

Board of Trade, Whitehall.

Saturday, April 23rd, 1887.

PRESENT:

LORD HERSCHELL. | JAMES F. HUTTON, ESQ.
LORD MACNAGHTEN. |

LORD HERSCHELL IN THE CHAIR.

Mr. JOSEPH FRY called in and examined. *Mr. J. Fry.*

23 April 1887.

1163. (*Chairman.*) You are, I believe, at the head of the Manchester Department of the Patent Office, so far as relates to registration of trade marks and designs?—I opened the office in Manchester.

1164. You were engaged in that capacity under the old Act?—Under the old Act.

1165. I believe some time after the new Act came into operation your duties were transferred to London?—Yes, I was in London from February 1884 to about the middle of August 1885.

1166. Since then you have returned to Manchester, and have been engaged there exclusively?—Yes.

1167. Your department relates exclusively to the registration of designs and trade marks under the 23rd and 24th classes?—I have nothing to do with designs. I have had to do with the cotton trade marks, which are included in Classes 23, 24, and 25.

1168. You have nothing to do with trade marks under any other classes but those?—The trade marks in the other textile classes are sent down to the Manchester office for public reference for the convenience of the trade. I have nothing further to do with them. Persons come and make a reference there. I do not say how far that reference is satisfactory to them.

1169. But the initial steps as regards the trade marks, under the cotton classes, are taken now in the office at Manchester. Of course I do not refer to the application; the application is made, I understand, in all cases to London?—In all cases to London.

1170. But the inquiries which follow upon that application are, in the first instance, made at Manchester?—Well, I hardly understand that question. There are no particular inquiries now made in Manchester.

1171. Do not you search?—Yes, so far as the search is concerned.

1172. I meant the inquiries made in the office with a view to seeing whether the application was one which ought to be acceded to. Those are made in the first instance in Manchester in the case of all applications in the cotton classes?—It hardly goes so far as that as to whether the application should be acceded to. It is a search, and I am told to refer to marks bearing in any way on those marks which are then under examination.

1173. Having made that search you communicate the result to the London office?—It is communicated to the London office by report, simply quoting the numbers of the marks, not the applicant's name or the devices or anything of that sort, but simply referring to the marks by number.

1174. That, of course, would enable the London office to see exactly the marks to which your report had reference?—Yes.

1175. Besides referring them to all the marks which seem to bear upon it, do you report your opinion as to whether those marks conflict or do not conflict with the mark of the proposed applicant?—Not now.

1176. Did you at one time?—At one time, when I was first sent back to Manchester, my instructions were to do certain things. Those instructions I carried out so far as I was able. But the applicants in Manchester found out that the inquiries I made in Manchester led to them giving a great deal of attention at the time to the matter, whereas when they heard from London those inquiries were all thrown on one side in many instances, or further inquiries were made. If your Lordship will allow me, I should like to read a letter which shows the opinion of the trade generally with regard to the work that I attempted to do in Manchester.

1177. (*Mr. Hutton.*) What period are you alluding to?—I am alluding now to the latter end of 1885 and the beginning of 1886. This letter is dated "Manchester, 1st June 1886." The letter is addressed to the Keeper of the Trade Marks Registry, Manchester. A copy of this was sent to the Comptroller in London, and a copy to the Chamber of Commerce of Manchester. "Dear Sir,—On the 12th and 26th "ultimo you requested us to attend at your office "regarding our applications numbered respectively "53,218 and 53,799, and on attending we found that "the request had been made for the purpose of show- "ing us various marks representing subjects similar "to ours, and of ascertaining whether we considered "that the consent of the owners of these marks should "be asked, and whether we would ask this consent, "before you reported on our applications to the "Comptroller. On these two occasions we have "declined to express an opinion on the marks shown "to us, and we would justify our position in this "matter by a reference to the last case, in which, after "receiving a similar request from you, we asked the "consent of the owners of certain marks shown to us. "On the 26th December last we applied for registra- "tion of a fish mark, 49,889, and in response to a "similar communication from you, we picked out "three marks, the consent of whose owners we should "ask. These were 12,893, Messrs. Farbridge, "Holliday, and Co.; 23,821, T. G. Hill and Co.; "32,132, Messrs. Stewart, Thomson, and Co. We "wrote to all these firms, and in response to our "letters Messrs. Farbridge, Holliday, and Co. offered "to refer the question to their China friends, but the "other two firms named could not see their way to "grant the consent asked, and we therefore thought "it would be useless to avail of Messrs. Farbridge, "Holliday, and Co.'s offer, and we wrote them to "this effect. We reported to you that we were "unable to obtain the consent of the owners of these "three marks, and we expected to hear, in the usual "course, that our application could not be proceeded "with. On the 10th March the Comptroller sent us "a communication, drawing our attention to the "following marks as bearing a resemblance to ours: "No. 12,893, Messrs. Farbridge, Holliday, and Co.; "48,523, Messrs. Clarence Houghton and Co. Second "class marks, volume 119, page 99, &c. In this com- "munication no reference is made to the two firms "who, as the Comptroller doubtless knew, had declined "to grant consent. The question of their consent was "thus dispensed with, and it appears to us that it "would have been better had we never approached "those two firms on the subject. Why, therefore, "should we again put ourselves in the same position

Mr. J. Fry.

13 April 1887.

" of asking a firm for consent, and then finding the " Comptroller does not require it? What is the good " of asking his consent? Whether granted or refused " it may turn out that the Comptroller does not " consider it requisite, and in any case this consent or " refusal is of more weight after the Comptroller " has thus given his decision than it could be before. " We are sure, too, that it cannot be pleasant " for any firm to be asked whether or not it is " agreeable that a certain mark should be registered, " and then find that their reply is officially ignored, " and that if they want their refusal to be of any " effect they must bring the matter before the " court. Some months ago, you may remember, " Messrs. William Graham and Co., under similar " circumstances, applied to us for consent to the " registration of their mark 47,874, and this we were " unfortunately unable to grant; but the Comptroller " saw fit to pass the mark, and on the 18th January " we wrote to him protesting against this course. " His reply was to the effect that he considered the " mark applied for sufficiently distinctive to admit of " his passing it, and that therefore Messrs. Graham's " opinion, or our opinion, did not relieve him from " his responsibility to do so. After this Messrs. " Graham spontaneously abandoned their mark, as " a protest against the manner in which an arrange- " ment between two friendly firms was overridden " by the Comptroller. We therefore do not see our " way, so long as the existing course of action is " adhered to by the Comptroller, to give or to refuse " consent to the registration of marks until he has " referred the applicants to us; nor shall we, in " future, ask the consent of any firm to the registra- " tion of our marks until the Comptroller has referred " us to them. The course pursued by the Comp- " troller which has led us to this decision, certainly " seems to us to stultify the efforts of the Manchester " office to bring about friendly arrangements, but in " making an application for registration we are appli- " cants before anything else, and as such our first " desire is to get our mark registered with the least " trouble possible. This end seems to be attained by " letting our application take its course until we " receive the usual communication from London re- " garding it." Messrs. Beith Stevenson and Co. are the writers of the letter. The letter bears on the face of it a note that a copy of this was sent to the Comptroller. They were also kind enough to send me a letter acknowledging the receipt of this. " Patent " Office, Trade Marks Branch, 9th June 1886. " Correspondence 8029. Gentlemen,—I am obliged " for the copy of your letter of the 1st instant to " Mr. Fry; it shall be sent to the Board of Trade " for consideration, in view of the approaching con- " ference with the Chamber of Commerce in Man- " chester. I am, gentlemen, your obedient servant, " J. L. WHITTLE, Registrar.—Messrs. Beith Steven- " son and Co."

1178. (*Chairman.*) You had called their attention to these marks which might possibly conflict, or be thought to conflict, with the mark applied for, before the matter had been dealt with or was being actually dealt with in London?—In the course of my examination before making my report.

1179. The complaint is that after they, acting upon that, had made inquiries as to obtaining the permission, they got a subsequent communication from the London office, entirely disregarding what had been done in the Manchester office, requiring them as a condition that they should get the permission?—Of the owners of other marks, and ignoring some of the references which they had failed to get.

1180. It included one of the marks to which you had called attention?—It included one.

1181. And as the result of that, if they did not get that permission, would it follow that the application would be refused?—Not in all cases. It is out of my hands then.

1182. I suppose you would recommend that he applicant should never be required or requested to obtain the consent of other trade mark owners, unless the conclusion had been arrived at that, if he did not obtain that consent, his application must be refused?—Messrs. Beith Stevenson and Co. put it in that way, that people, when they are asked for their consent to new applications, and they refuse it, do not like to see that application go on to registration in the face of their refusal.

1183. It strikes me certainly as expedient; but do you agree in that view that the applicant ought never to be requested or required to seek for consents unless the conclusion has been arrived at that his application must be refused unless he gets them?—Applicants, unless they know that, will not take the trouble to either ask or give consent. That is what the letter distinctly states. Therefore the work that I was really sent down to Manchester to perform I was unable from that time to perform. Not only that firm but many other firms made the same remark. " It is " no use our attempting to get or give consents if " they are to be overridden."

1184. What were the instructions which you received when you went to Manchester?—A letter of the 22nd August 1885. This letter was given to me at my earnest request that I should have instructions before returning to Manchester. Of course the information was given to the Chamber of Commerce.

1185. (*Mr. Hutton.*) Do you mean a copy of your instructions was given to the Chamber of Commerce?—No, there was a letter sent to the Chamber of Commerce at the instigation of the Duke of Richmond and Gordon, who was then the President of the Board of Trade, saying that I should return to Manchester, and that I should have certain duties to perform.

1186. That is the letter of the 1st August which you allude to, I suppose?—Probably. On the 22nd August 1885 I received this letter:—" Dear Sir, " In conformity with a direction of the Board of " Trade I give you the following instructions with " reference to your duties on your return to Man- " chester to resume the charge of the Trade Marks " Office of that city. Whenever you find that a mark " applied for in London and sent to you for examina- " tion resembles a mark or marks already registered " or recorded in the B list, and not a bleacher's mark, " you should seek to ascertain whether the owner or " owners of such registered mark or marks is willing " to consent to the proposed registration, and should " seek to obtain and transmit to the Comptroller such " consent in writing. You should also report any " other circumstances which in your opinion ought to " be made known to the Comptroller before he decides " whether the application should be accepted or re- " fused." Those are the instructions I got.

1187. (*Chairman.*) Then your duties were confined to seeking for marks that might be conflicting and communicating them to the London office?—Yes.

1188. Beyond those contained in the instructions?—Yes.

1189. Did you report as to which of those marks you thought did conflict and which not, or did you merely send all those that it was necessary to consider before determining the application?—I take this mark of Messrs. Beith Stevenson & Co., 49,889. A reference to my book shows that these applicants, Messrs. Beith Stevenson & Co., called on the 7th January 1886. They were shown five marks; three of those marks they said they would try and get the consent of. I find a notice here saying " Consents not obtained." Special attention would be drawn to that in my report to the Comptroller.

1190. That hardly answers the question which I was desiring to put. You make a search and you find, we will say, half a dozen marks that need consideration before determining whether to grant the application; would you express to the Comptroller an opinion upon whether those marks would really conflict, or whether, notwithstanding those marks, the application ought to be granted?—No, I should not go so far as that.

1191. You did not consider it within your functions to give any such expression of opinion?—No.

1192. (*Mr. Hutton.*) You simply report the numbers which you consider conflicting?—Yes.

1193. But would not those instructions convey the meaning that it was within your function?—From the experience I had in London I should not think so.

1194. It says you are to report any other circumstance which ought to be made known to the Comptroller?—Those circumstances are all included. I report that they have not got the consent of the owners of those various marks.

1195. (*Chairman.*) It would seem a little premature to go into the question of consents until some conclusion had been arrived at, even if it were only a provisional conclusion, as to whether the mark could or could not be permitted if no such consent were given?—There is no doubt, I think, that Manchester expected such would be the case, but in practice it is not so.

1196. The terms of the instructions seem rather to suggest, do they not, not that the applicants should seek for the consent, but that you should endeavour to obtain the consent?—I wrote to the office on that point, and I suggested that I should get the feeling of the trade. I did so. I applied to the Chamber of Commerce, and they, with their usual kindness, at once were very glad to take up the case and they gave me their feeling; they thought it was inadvisable that I should undertake that work; that it was much better that firm and firm should be brought into friendly arrangement instead of having any official working which might lead to trouble of one kind or another, whereas friendly firms could easily make their arrangements with one another.

1197. Do you think that first difficulty to which you have called attention would be got rid of by providing in practice that the applications for consents should only be suggested where the office had arrived at the conclusion that without such consent it would be impossible to register the applicant's trade mark?—Then you are giving a decision that you will not do certain things unless certain things are done; but the arrangements of the trade may obviate that. The arrangements of the trade may be: "Well, we do not care to give this consent, we shall waive the idea;" and then the new applicant may say: "I do not want "to have the consent stamped on my paper if the owner "of the registered mark says it is not necessary." The office may take one view and the trade may take another view; and then the new applicant says: "I do "not want to have my mark branded with a consent "which the owner of the old mark says is un-"necessary."

1198. That would be got rid of by providing that the application need not be registered as a consent application unless the firm who are applying for it so desire it. You need not lay down a system which compels it to be registered as a consent if the persons whose objections were regarded by the office think there is no objection. Would not that meet the difficulty?—At present I have not to do with the registration. I should think myself that it would.

1199. I do not see any middle course possible. I quite appreciate the difficulty raised by the letter of Messrs. Beith Stevenson and Co. It strikes me that might be met in the way I suggested, and with the further provision which I have also suggested, without any additional difficulty, and I do not see any other course. Can you suggest any?—I think where consent is given that ought to be notified on the paper.

1200. Even though the person says: "I consent because I do not think it conflicts"?—If a consent be given I would take it that that consent had better appear.

1201. Why? What advantage is there?—It would show that the consent has had to be asked.

1202. I thought you said the trade would object to that?—They might, or they might not. You cannot tell exactly what the feeling of the trade would be in these cases. It is a special trade, the cotton trade; you cannot lay down hard and fast rules.

1203. You think that it would be an improvement, instead of asking for consents speculatively, and then possibly granting the application though the consents are refused, only to have the consents asked for when the consents are really necessary because the applicant can only succeed by obtaining them?—The trade, as a rule, are never backward in giving consents where they see that it is a fair thing.

1204. No, but the objection is to asking for consents at that early stage, as I understand, to asking for consents and then finding that the trade mark is afterwards registered notwithstanding the refusal of the consent. I understand that to be the objection?—If the consent is refused one would naturally suppose that the marks interfere.

1205. Then the consent ought not to be asked. There ought not to come a suggestion from the office to ask the consent unless the office has come to the conclusion that the consent is necessary to the success of the application?—From the office view it is necessary originally, but they may get such information afterwards as may alter that; at least I take it so from the course that has been persued. Explanations may be given by the applicant.

1206. Surely all those explanations ought to be invited and received, and considered before they suggest a question of consent?—Yes, but in the examination, if you will allow me, we pick out certain marks that bear upon it.

1207. (*Mr. Hutton.*) You do in Manchester?—Yes, and then, supposing I had to do the work in Manchester, I should ask the owner to come, and I should place these marks before him, and I should say: "Now, there are the marks I have picked out, can "you give me any explanation as to whether this, "that, or the other is likely to interfere, or will you "make any explanation?" In this case that I am quoting here, so far as the first three are concerned, they say, "We will try for consents." With regard to the other two they say they would not conflict.

1208. (*Chairman.*) Take that very case. Supposing you yourself had been dealing with it, and had to deal with it in Manchester, and settle the thing finally there, and you had acted in that way, these firms refusing their consent, would you have granted the application?—I cannot call to mind exactly what these marks are, but I should say no.

1209. I mean as a general rule, where you call their attention to it, and in the end the conclusion is arrived at that they will ask for consent, that is because they are, I suppose, inclined to agree with you that those people might reasonably make complaint?—Certainly. On the other hand, with regard to these two that would not conflict, in all probability I have taken the same view that the applicant has done, otherwise I should probably have written here, "Consent not obtained." That would show my feeling in the case.

1210. You have written "Consent not obtained"?—That is only with regard to three of the five marks. I quoted five marks.

1211. You agreed with their view that those two did not conflict?—I think that would be the result. "We will try for consent;" that shows that Messrs. Beith Stevenson and Co. agreed with my view so far as regards those three. Then we must have considered the bearing of those two marks upon the case, and they must have proved to my satisfaction that they would not conflict. That only shows that I have gone a little further than what is absolutely necessary for the office duty.

1212. Would there be any practical difficulty in the matter being dealt with in this way: You make this search, and you call the attention of the London office to it. They look at them, make any search they please, and communicate to you any others, if they think there are others which ought to be considered. You consider all those and form your

Mr. J. Fry.

23 April 1887.

conclusion about it?—Is it to come back to Manchester?

1213. Yes?—That is a very roundabout way. It would take a great deal of time, and increase the work enormously, to have these marks received in London and sent up to Manchester for examination, and returned from Manchester by report to London, and back again from London to Manchester.

1214. That takes place now, does it not?—So far as this: that the applications are made in London and sent down to Manchester for examination, and then returned from Manchester to London. There is one point I would make here, it is not an exceptional case: when two applicants in Manchester have made applications by post the same day for the same mark. Now, as the first mark on the register is the one which is the first to be dealt with, it may be the man who posted the mark first or last; whereas if the application were deposited in Manchester a number is given to it at the time of deposit, it may be 3 o'clock, half-past 3, or 20 minutes to 4. But in the other case, one mark may be posted at 12 o'clock and the other at 6 o'clock the same day; and the one posted at 6 o'clock might possibly be opened first in London.

1215. Where you have applications from Manchester and Glasgow and from London all in the same classes, surely you must have the applications all sent to one place?—Yes.

1216. Would not there be a difficulty in making that place Manchester?—I do not think so, from the Report of the Chamber of Commerce in 1883.

1217. The Glasgow people are content with it, but do you suppose the London people would be?—London people have all got their agents in Manchester.

1218. (*Lord Macnaghten.*) Unless you require personal application, I suppose it would create the same difficulty in Manchester, would not it?—Those marks, in all probability, would be got up in Manchester, because they are to be stamped on goods. Almost all cotton marks are got up in Manchester. It may be by tracing, from abroad, but still the stamps are made in Manchester.

1219. (*Chairman.*) It does not strike me as creating any very great difference where the application is made. The question rather is how it is to be dealt with?—This is a very common occurrence: A firm will apply for two, three, four, or more marks by one post. The acknowledgment from London says that these have been received, and gives numbers, but the applicant has to go to the Manchester office to verify those numbers. He cannot tell what No. 1 is, what No. 2 is, what No. 3 is, or what No. 4 is.

1220. (*Mr. Hutton.*) Do you mean the numbers are conflicting?—No. He sends in half a dozen applications by one post. He wants to know what London number has been given to each of those applications, so it obliges him to make an application to the Manchester office to see which is which.

1221. (*Chairman.*) Would not that be necessary if he merely got a similar intimation from the Manchester office?—At the time of delivering the applications the clerk, or whoever it is that brings the applications, would receive particulars as to the number given to each mark.

1222. If you had it in Manchester, the business chiefly arising there, it would facilitate personal applications instead of postal ones?—Yes. It would also give applicants the information they want—what is No. 1, what is No. 2, and what is No. 3.

1223. That is because it is a personal application instead of a postal application?—That is so. Beyond that, in the working of the examination, it is very frequently the case that I want information as to what a mark is—what it intends to represent. It causes me to send up for the people, and to get the information from them; whereas, if the application was made in Manchester, of course the receiving clerk, who would understand his duties, would examine the marks, to a certain extent, as to clearness of design, or description, or device, and if there was any difficulty likely to occur, he would say, "What is this? What is it intended for?" All this writing, this enormous correspondence which we have, would be done away with; that would be all done at the time of the application. Then, supposing there is some error in the application form, either for "piece goods" or for any simple thing like that, it is astonishing the amount of correspondence that these little trivial matters cause. Then, again, in the question of facsimile copies of marks, it is necessary that these copies should agree one with the other. Of course, they appear trivial things, but still it is obliged to be done. I must have two copies which are facsimiles, one for my numerical list and another for my group list. I take this recent letter of the 19th April, in answer to my inquiry: "I am directed to acknowledge the receipt of "your letter of the 18th instant and its enclosures. "I now send to you two copies of the trade mark, "63,719, agreeing in respect of the line heading, which "it is assumed is the point of difference referred to in "your letter between the two representations sent "you on the 15th instant." These representations not agreeing, you see, I am obliged to write to the Comptroller, returning them and asking for representations that do agree, whereas if the application was made personally in Manchester all this would be attended to at the time.

1224. That points to the advantage of initiating proceedings on trade marks under these cotton classes in Manchester instead of in London?—Yes.

1225. (*Mr. Hutton.*) Do you know, out of the number of applications made for registration of cotton trade marks last year, how many of them came from Manchester; can you give me the proportion?—I should think it is over 90 per cent.: I mean to say from people resident in Manchester, or having branch offices in Manchester, or agents in Manchester. I should say it is decidedly over 90 per cent. of the total applications.

1226. (*Chairman.*) And of the remaining 10 per cent. can you tell what would come from Glasgow?—You may take Glasgow as being Manchester, because almost every Glasgow firm has either a branch office or an agent in Manchester.

1227. You include Glasgow?—Yes.

1228. (*Mr. Hutton.*) Do you know how many come from London?—Most of the London people have offices or agents in Manchester. There are London people that I am not quite so sure of. For instance, I see I have applications July to December; on the 7th of July, for instance, 11 in Manchester; one from Orr, Ewing, and Co., Glasgow—they have a firm in Manchester; one from a firm in Madras, who also have an agent in Manchester; and then another from New York. I am not quite sure whether those people, who do not do much in trade marks, have an agent or not.

1229. (*Chairman.*) Manchester would do as well for New York as London?—Quite so. All these are Manchester agents. Then there is one from a firm in London who only register a very few marks. One firm in Manchester alone sent in at the opening of the office something like 2,000 marks, and that was not anything like the full quantity they are constantly using.

1230. (*Mr. Hutton.*) You mean in 1876?—Yes; between 1,700 and 2,000; but that does not anything like represent the full number of variations of marks that they use. Then there is the firm of Thorne and Co.; their applications are now made in London, but I do not know whether they have agents in Manchester or not.

1231. Is that a London house?—It is a China firm, I believe, having offices in London. With the exception of Messrs. Thorne, I should think almost everybody else has either got agents in Manchester or a branch house in Manchester. I think Messrs. Thorne are in the habit of applying for their marks direct.

1232. Most of the London houses apply through their Manchester agents?—Yes.

1233. Though they register in their own name?—Yes.

1234. Jardine, Matthieson, for instance?—Yes.

1235. They register in their name?—Yes; but the agents generally apply for it.

1236. Is that letter from Messrs. Beith Stevenson and Co. a type of many others that you have had?—This is the only letter that I have; but about this time people frequently made the same remark, that they would not trouble either to ask or give consents until they heard from London.

1237. Have they made verbal complaints or written complaints?—Verbal. There was one case which has been placed in my hands, as many other papers have been placed, with regard to an application made in November 1885, but I would rather not refer to that.

1238. If these instructions had been carried out distinctly, as they are given by the Board of Trade, do you think they would have led to the same difficulty which we find now?—I think the Manchester people would much prefer to arrange their consents by word of mouth, and not by letter.

1239. Do I gather that the arrangement between the Manchester firms was made in consequence of the instructions of the Board of Trade? You mentioned the word "they." You said "they" prefer dealing between themselves—that the firms in Manchester should meet and arrange the matter themselves. Did you mean that the Board of Trade prefer or the Manchester trade prefer?—The Manchester trade; that it should not be done by correspondence; they do not want correspondence.

1240. Is not that one of the points in which these instructions, which were given to you in August 1885, have not been carried out?—I could not carry them out.

1241. They were impracticable?—After that date. Before they were in practice, and apparently gave much satisfaction to Manchester.

1242. That is prior to the Act of 1883?—I thought you referred to the consents.

1243. No; I was referring to the instructions of the Duke of Richmond when you went down to Manchester in August. The instructions were that you were to ascertain, and to seek to obtain, consents. I understood when that letter went down, if those instructions had been carried out, it would have given satisfaction generally to the trade in Manchester?—Yes.

1244. If the whole thing had been left for you to do?—That is what the Manchester people have said over and over again.

1245. (*Chairman.*) That is, if the whole matter had been left for determination in Manchester, not the system which existed, or was suggested, of your trying to get the consents; they thought it was better that you should not interfere and come into direct communication with the other firms, as I understood?—No, that is rather different again. When I put the case before the Chamber of Commerce they said that in the first instance it would be better that the new applicant should himself confer with the conflicting registered owners. But if the new applicant came and said:—"Oh! you show me these marks; I do not consider them conflicting," and my opinion is that they do conflict, I say:—"Very well, sir, if you do not do that I shall have to see the registered owners." Then the Manchester people suggested that so many days should be allowed for the registered owners to come and see the marks for various reasons. Supposing that I had to go so far as that, the Manchester merchant might be out of town; he might not be ready to come on the day or two days that I am ready to show the mark to him; so that a latitude, I think, of ten days or a fortnight was to be granted for the registered owners of marks to come and inspect the new application.

1246. Putting aside for the moment whether the application is to be in London or in Manchester—that has its separate advantages—I will deal now only with the mode of administration in actual relation to the application. Supposing it were left to the Manchester agents to make searches, to consider the question, and to form its conclusion as to the marks that did conflict, and which therefore would stand in the way unless consent were obtained, supposing that viewwere communicated to the London office, to the Comptroller, and approved by the Comptroller, and then the whole matter carried out at Manchester, as to requiring the consents, and seeking for the consents, and so on, and dealing with the application, would not that meet many of the difficulties?—That is doubling the work.

1247. When you say "doubling the work," of course there is no alternative except to have the Manchester office absolutely independent of a Comptroller at all, you are to have no head then; you are to have the two things entirely independent. In a sense, you may say, it is doubling the work, but it is not really doing so, it is only giving a certain power of revision which would only be exercised if it were thought to be a decided case for its exercise by the London office. Putting aside for the moment the objection to what you would say would be some duplication of the work, would not that substantially be a great improvement on the present system?—It depends entirely upon what basis that work will be carried out in London. In 1883 the complaints commenced; the trade was very bitter about what was being done in 1883, and I believe the Chamber of Commerce asked that Mr. Lack, the Comptroller, should come down to Manchester. Mr. Lack being too busy, Mr. Whittle was sent, and then the trade explained fully what their feeling was in the matter; where marks had been accepted which ought to have been refused; where marks are refused which ought to have been accepted, and they said at the time, Manchester being noted for its plain speaking, they wanted more common sense and less law.

1248. I quite understand that the whole thing might be, notwithstanding what I have suggested, wrecked if it were worked in a particular manner and in a particular spirit. I was not suggesting a scheme under which the work was to be done, as it were, independently in London. My suggestion was that substantially the Manchester determination should govern the question, leaving only a power of revision, which should be exercised, according to certain definite principles, by the Comptroller personally?—Those principles I cannot arrive at. The trade is so peculiar, so unlike any other trade, that I hardly see where you can draw a hard and fast line.

1249. (*Mr. Hutton.*) For want of practical knowledge of the trade?—Unless you have a practical knowledge of the trade. The practical knowledge which I have has been derived through extensive experience of the trade not only in India but all through the Straits Settlements, Manilla, China, and through the West Indies, and besides that six years' experience in Manchester in a shipping house, where I had exceptional opportunities for learning the business. Unless you are amongst the trade you cannot get fairly the feeling of what is fair to pass in certain instances, and what is unfair to pass.

1250. Or what will conflict?—Yes.

1251. (*Chairman.*) That is precisely what I am suggesting, that the matter should be in the main determined and dealt with in Manchester. If you have a department you must either have it an entirely independent and separate department with no connection with the other, or you must have a head who is responsible to be public and is to be treated as the head of the office. It is not inconsistent with that that very large independent action should be left to one who was yet subordinate to the head?—I think the Manchester feeling has always been to retain the registration in London.

1252. (*Mr. Hutton.*) Prior to the Act of 1883 I believe you had a good deal to do with the Committee of Experts?—If you will allow me, I will tell you something of the commencement of the office which may also

Mr. J. Fry.

23 April 1887.

help. The Act for establishing a register of trade marks was passed, I believe, on August 13th, 1875. The Act enacts that the trade mark shall be registered within six months of the date. Then it was that the Manchester people woke up to the danger they were in. They said, "What! if everybody has to apply for "their marks in this way, we shall be all in litigation "directly." The result was that an association called the Manchester Trade Marks Association was formed. I believe there were 300 applicants for the post of secretary to the Trade Marks Association. I was fortunate enough to obtain it because I wanted work to do at the time. I was at home and had nothing to do, and I thought it would be a congenial work. On the 22nd February 1876, at the request of the Manchester Trade Marks Association, a meeting was held at the Chamber of Commerce of the trade generally, to discuss this question of the Act and the bearing of it on the Manchester trade. The gentlemen present were Mr. George Lord, the chairman of the Chamber of Commerce, and Mr. John Slagg, Mr. Latham, Mr. Thomas Ashton, Mr. Bernus, the present Sir J. Lee, Mr. Chapman, Mr. Reiss, and Mr. Grundy represented the Manchester Trade Marks Association; Mr. Benjamin Davies, Mr. R. Bealey, and Mr. E. Sykes represented the United Bleachers' Association; and there was present a Mr. K. M. Mackenzie. The meeting discussed the question, and they then appointed a sub-committee to go further into it. On the 25th February 1876 there was a meeting of the Chamber of Commerce, and the committee elected,. on the 22nd instant, Mr. George Lord and Mr. Slagg representing the Chamber; Mr. Potter, Mr. Latham, and Mr. E. Reiss, the Manchester Trade Marks Association; Mr. E. Sykes and Mr. B. Davies representing the United Bleachers' Association. They decided that the trade as a trade generally should draw up a petition and send it up to the Lord Chancellor. This is a petition that was sent up. "We, the undersigned mer- "chants, manufacturers, and bleachers, interested "in the Manchester trade, hereby state that we have "the gravest objections to that portion of the Trade "Marks Registration Act of 1875 affecting textile "fabrics, on the ground that it is likely to lead to an "endless litigation and prove ineffectual in protecting "trade. Your petitioners therefore pray that the "rules, so far as the textile fabrics are concerned, "may not become law." One hundred signatures were attached, and this petition was presented to the Lord Chancellor, who was at that time Earl Cairns, I believe, by Mr. Hugh Birley, who was then the senior member for Manchester. Following this very shortly, on the following day, I see a memorial to the Lord Chancellor and a petition to the House of Commons in identical terms sent by the chairman of the Chamber of Commerce, by the chairman of the Manchester Trade Marks Association, and by the chairman of the United Bleachers' Association, which was to this effect: "That your memorialists "represent the various interests concerned in cotton "textile manufactures in the County Palatine of "Lancaster. That your memorialists have had under "their consideration the rules supplied by your Lord- "ship for applying the Act passed in the last session "of Parliament, entitled, 'The Trade Marks Regis- "tration Act, 1875.' That your memorialists desire "to bring under your Lordship's attention the grave "objections existing to the operation of the Act in "its application to textile fabrics and yarns on the "ground that it is costly, ineffectual, and likely to "lead to much confusion and litigation. That the "said Act, though nominally of optional application, "is practically compulsory on all who wish to protect "their property and interest in trade marks, and all "branches of the trade in this district are already "grievously embarrassed by the fear of losing their "old and established rights in certain marks, the "possible limitation of those rights, and the cost and "trouble which compliance with the rules of the Act "involve. That in most foreign markets, and in the "East India trade especially, there is an almost "endless variety of markings, ticketings, stampings, "and headings which have hitherto been recognised "as the distinct property of those who have first "introduced them into the market; that it now "becomes possible, under the new Act, to compel "merchants to abandon the use of such marks, and "for the disputant to obtain a monopoly to which he "has no right, and which may not even be necessary "to his business. That merchants are thus compelled "either to register at great cost every stamp that can "possibly be useful to their trade, regardless of pre- "vious uses and proprietorship, in the hope that "fortune may befriend them in the litigation which "may be necessary to substantiate their claims, "or they will abandon the expensive experiment of "registration and await their opportunity of attacking "the position of those who have ventured first into the "field. The success or otherwise of such attack must "greatly depend on the information or caprice of the "Registrar, who can form some idea of the task "before him from the fact that many of the largest firms "have as yet taken no steps to register their multi- "tudinous stamps and headings. That the enormous "number of marks tickets so used by some houses, "the similarity of the designs, and the manifold "combinations in which they are applied to various "fabrics, renders an accurate registration under the "Act impossible. That not only would immense "trouble and expense be entailed in constantly "watching the register to guard against infringe- "ment, but a proper inspection of the designs "registered would be impossible unless the depôt "for them was established at or near the centre of "the industry affected. That by a mere oversight "in perusing the register, by some unavoidable "delay in attending to a notice of opposition, or in "giving security for the costs of such opposition, "the ownership of a stamp or ticket, practically "indisputable under the old law, might be quickly "and quietly appropriated, and the merit and advan- "tage of a persevering industry alienated. That "there are many marks and tickets which have by "long use become common property, and as such, "are freely applied with the tacit understanding "of the traders concerned. This Act, however, "encourages the attempt to appropriate these common "marks, for it is open to any one to register them, "and either through oversight or unsuccessful liti- "gation the public rights may constantly be subjected "to unnecessary and unjust peril. That in regard "to stamps, marks, and headings which are of "common use, bleachers and others who simply "apply to goods for hire are placed by the Act "in question in a position both unjust and dangerous, "whilst these persons have no interest in the use of "one stamp more than another, but simply obey the "order of their customers. In doing this, however, "they are subject to attack from any person who "may have thought fit to register the mark in ques- "tion, and they are thus forced either to keep a "constant watch on the register, to defend an action "at law, or to decline altogether to stamp goods, or "to bleach any that have headings. That it is "certainly desirable that marks and tickets should be "protected in the interests both of the importer and "consumer, but the decisions under the old law have "left little doubt as to what constitutes a trade mark, "and when it is too closely imitated. In cases of "dispute, however, a satisfactory arrangement can "generally be made without recourse to legal pro- "ceedings. Your memorialists therefore pray that "the cotton textiles comprehended in Classes 23, 24, "and 25 of the First Schedule of the Rules of the "Trade Marks Registration Act, 1875, may be ex- "cluded from the operation of that Act." On the 13th March a deputation to the Lord Chancellor went up, present, Mr. Edmund Ashworth, the president of the Chamber of Commerce, and Mr. John Slagg, a director. Mr. E. C. Potter, chairman of the Trade Marks Committee, Mr. J. Fry, as secretary; Mr. Ben-

jamin Davies, Mr. T. Glaister represented the United Bleachers' Association, Mr. F. Ashworth, Mr. W. F. Danson, Mr. S. A. Fulda, represented the merchants. The deputation was introduced by Mr. Hardcastle, M.P., and Mr. Hicks, M.P. Subsequently to that I called upon Mr. Lack at his office, and he showed me the first printed copy, I think, of the Trade Marks Journal, in which, amongst the representations of marks, I noticed one belonging to the firm with whom I was for six years of my business life in Manchester. This mark represented a cock in a double circle, with the name at the top Gibson, Ord, and Co. (That was the name of the firm when I was with them.) At the bottom Gibson, Hankey, and Co. —those were successors. At that time I think I told Mr. Lack, and I maintained that if that had gone forward to the public there would have been hundreds of people ready to go into litigation, because the cock is one of the commonest marks we have in the Manchester trade. And, although the cock in connexion with Gibson, Ord, and Co.'s name meant a great deal to them upon goods in Calcutta, where they had certain special qualities of goods, still, unless they disclaimed that cock as being private property, it would stop (so the Manchester people thought) the use of the cock by anybody else. I pointed this out to Mr. Lack at the time particularly. I said, "Here, "on the face of your first journal, is endless litiga- "tion." On the 21st March 1876, Mr. Lack, the Registrar of Trade Marks, visited Manchester, and as secretary of the Manchester Trade Marks Association, I went round with him to inspect the trade marks in use by the following firms and associations. These represent shippers, manufacturers, people engaged in the home trade, and the foreign trade as well. I can give the names if necessary, but I do not suppose it is. On the 24th March 1876 there was a meeting of the Manchester Trade Marks Association to receive Mr. Lack. At the meeting of the Trade Marks Committee at the Chamber of Commerce, at which Mr. Lack was present, he said from what he had seen while in Manchester he should suggest a compulsory drawing in of all old marks as a basis to start from. Marks to be divided by a practical body and extension of time given for the registration of marks. On the 27th July 1876 a scheme for dealing with the Manchester trade marks was received, I believe, by the Chamber of Commerce. On the 28th July 1876 there was a meeting of the sub-committee of the Chamber of Commerce. Subsequently to that meeting I had frequent interviews with Mr. Lack in London on the suggestion of the Committee of the Manchester Trade Marks Association, of which I was then acting as secretary. Subsequently Mr. Lack attended in Manchester, at the Chamber of Commerce, and read the new rules for applying the Act in respect of cotton goods, and under which the Chamber of Commerce would be asked to nominate members to constitute a committee of experts. A depôt in Manchester will be provided. I was nominated by the Chamber for the appointment of the official for carrying out the provisions of the Act.

1253. (*Chairman.*) Is this what led up to the appointment of the committee of experts?—Yes.

1254. We have had that so very fully given by Mr. Bailey that it is hardly necessary to go into it again. That was the committee which divided the marks into first and second class?—Yes. Then the marks were sent into the Manchester office and arranged. They were, of course, entered in books, one of which we now term the numerical list; and then these were arranged and classified. In course of time the committee commenced their work, under instructions which were sent down for their guidance by the Commissioners of Patents, and they dealt with the marks in the various divisions as they came forward, and classified the marks. Some of these marks, such as what are termed face plate combinations, were all before the committee as many as six or eight times for dealing with separate and distinct portions of these marks. Eventually, after about 2½ years of work, the committee concluded their work. They sent out a short report, but that report was amplified in the copy of the resolutions that the committee had passed from time to time for their own working.

1255. (*Mr. Hutton.*) You were secretary the whole time of that trade mark committee until they finished their work?—Yes; I opened the office. I held that office up to February 1884, when I was transferred to London, as a temporary measure, for six months.

1256. It was after that you came to London?—In 1884 I came to London. The office was opened in 1876.

1257. You remained in Manchester until 1884?—Until February 1884.

1258. Your experience shows, I suppose, that those decisions, given by the committee of experts, gave general satisfaction to the trade?—General satisfaction; but of course in a work of that kind it is not to be expected that everybody would be satisfied. If you have read the report of the committee fully, and understood it fully, I think there they acknowledge that there are certain marks in the B list which they regret to see, but that they would still have a means of getting their redress through the court. Still those marks were outside the instructions of the Commissioners of Patents, and they could not deal with them.

1259. But they were put in this list in accordance with the instructions, were they not?—Yes, because there must have been more than three applicants for that or a similar mark.

1260. (*Chairman.*) That is to say, marks which they thought were first-class marks and not second-class marks which they had to put in a second-class list?—No, they did not quite think them first-class marks. They were valuable marks to the people who held them, but then they might be shipping to one market, and the other people might be shipping to a variety of other markets. Since then, of course, there have been applications to the court, and the court has granted the marks, but that has not always gone in the line that the Manchester people have approved of. For instance, a short time ago the case of Sir Jacob Behrens and Sons came up, a demi bear mark, and it was found that the court had granted the demi bear to Sir Jacob Behrens and Co., while there was another demi bear appearing in the name of the bleachers in the same book. In the course of the inquiry made in Manchester recently on another head, but still bearing upon that mark, I received this letter from Messrs. Thomas Hardcastle and Son. "Firwood "Works, near Bolton. 17th March 1887. The "Trade Marks Office, 48, Exchange, City. Dear "Sir,—As far as we know we have never used the "demi bear trade mark standing in our name in the "second class for anybody but Messrs. Louis Behrens, "and Sons, and (or) Messrs. Jacob Behrens and Sons, "nor should we place any difficulty in the way of "either of those firms registering this mark in the "first class under the circumstances. We cannot, "however, refrain from remarking upon the strange "fact that this mark at present stands both in the "first class in the name of Sir Jacob Behrens and "Sons, and in the second class in our name, and we "are at a loss to comprehend how it ever came to be so "registered in the first class." In point of fact the bleachers at the time of sending in their marks deputed a man or men to send in every mark they had got. It is a custom, or was a custom of the bleachers, when they got a stamp, to put an impression into their book. The man who sent in these marks, perhaps, was not conversant with the history of each mark, and sent in everything. Very probably in this case Hardcastle sent in a mark which really belonged to Sir Jacob Behrens. That is not the only case where it has been done unintentionally. Still it remains: How was it that that mark which appears in the B list was not removed at the time that Sir Jacob Behrens was allowed to proceed with the registration of his. Therefore the Manchester people

Mr. J. Fry.

23 April 1887.

say that it would be better that these things should come before the Palatine Court, where the evidence might be had on the spot from the trade, that the trade could see what is being done, because the order of the court does not give very much information.

1261. (*Lord Macnaghten.*) Who was the applicant?—Sir Jacob Behrens.

1262. Did he bring the circumstances under which the bleachers' mark had been registered before the court?—I cannot tell. We cannot tell in Manchester what was done. It is only what is there.

1263. (*Mr. Hutton.*) Was not there a similar case of Mr. Hoyle?—Yes, he had a three-flag mark which has got on, but there is no disclaimer.

1264. It was put in the second class by the experts, was not it?—It was with a number of other three flags. I had evidence sent to me only a day or two ago with regard to that very question. No disclaimer appears on the order, as to Mr. Hoyle's three flags, and in a subsequent application made by the firm of Henrichsen they applied for that mark, and it was passed by the registrar for registration, but when under exhibit at Manchester at the Manchester office for advertisement, Mr. Hoyle took objection, and he sent the usual notice of opposition, a copy of which is here. He does not give any further reason except "Infringement of our registered mark 22,443." It is in connexion with the mark 36,382.

1265. Has this one been registered?—No, not in that form. Henrichsen sent a letter to the Comptroller as follows; it was dated 13th September 1884. Opposition No. 669, Trade Mark, 36,382, Class 24. "We have seen Mr. Hoyle in reference to their "opposition to our registered mark 36,382. We wish "to know whether it will affect the value of their "registration if we register ours and give them a "guarantee that we will not use it for England. "Also, whether you will allow us to substitute four "flags for the three flags on application No. 36,382. "Waiting your reply, we remain, yours faithfully, "S. Henrichsen and Co." This appears to be a copy of Joshua Hoyle and Sons' letter. It is headed 36,382. "41, Moseley Street, Manchester, Septem- "ber 15th, 1884. The Comptroller of the Patent "Office, Trade Marks Branch, 25, Southampton "Buildings, London. Sir,—The representative of "Messrs. Henrichsen has called here in reference to "our objection to registration of the application "numbered as above. It appears they have a series "of one, two, three, and four flags, and we said that "we could not and should not object to their appli- "cation for registration of the one, two, or four flags; "if that would meet their case we should be quite "agreeable. What we object to is the registration of "three flags, which we contend is so near our mark as "to deceive a purchaser." Then there is a letter from the Trade Marks Branch of the 16th September 1884.

1266. (*Chairman.*) Can you tell us shortly what was the end of it?—The answer from the Trade Marks office was that they did not see that it would interfere with Messrs. Hoyle's mark; but the end of it was that Messrs. Henrichsen, instead of registering the three applied for the four, but they are using one, two, three, and four as a set. The meaning of those words in connexion with the mark is this: Florida dowlas is of better value by 10 per cent. than "Dhollerah dowlas." Then comes the three flags.

1267. What is "Dhollerah dowlas"?—I cannot understand what the meaning of it is, except that dowlas may be made of Dhollerah cotton. Then under the three flags again, the translation is "Florida dowlas, made specially and only for D. F. Oppenheim and Company." In Volume 140 of the B list, a large number of three flags appear, sent in by bleachers and others; so that they really do not proceed with the registration of the three-flag mark, but they apply for the registration of four to show the style.

1268. (*Mr. Hutton.*) So that though the committee of experts put them in the B list, yet now, under instructions from the Board of Trade, the Board of Trade are still willing to register three flags;—Still willing to register three flags.

1269. In spite of their own decision in 1876?—That was the committee of experts.

1270. The instructions of the Board of Trade to the committee of experts are that all stamps with three flags, or with three objects, should be registered?—No, the Commissioners of Patents then gave the instructions with regard to trade marks.

1271. That was signed by Mr. Reader Lack?—He was then the clerk to the Commissioners of Patents.

1272. Could the work be done now better by a committee of experts in Manchester?—I do not think so; but I do think this; that where firm and firm disagree, the new applicant having no property whatever in a new mark that he has never used, it might facilitate work and save litigation, providing there was some body of well qualified merchants and manufacturers who could be asked to give an opinion.

1273. (*Chairman.*) A suggestion has been made that you, or whoever occupied your place in Manchester, should have the assistance of a committee of experts to whom you might refer in cases which you thought were on the line, or in doubt as to whether the registration ought to be acceded to or not. Do you think that would be advantageous?—I think it would be very advantageous in many ways, and tend to save litigation very greatly, and the soreness of feeling between firm and firm.

1274. Do you think there would be any practical difficulty in securing the appointment of a committee of experts which would give general satisfaction, or would there be likely to be personal jealousies and differences?—I think not. The Chamber of Commerce was asked in the case of the original committee of experts to nominate gentlemen for the duty, and although there were cases, as of course there must be, of individual hardship, generally the committee of experts are acknowledged to have done their work splendidly.

1275. There were some persons who took some objections, were there not, to the commission of investigation; I suppose that is the same as the committee of experts connected with the Manchester Chamber of Commerce?—Well, afterwards, Mr. Hoyle did, at a meeting of the Chamber of Commerce, at which I happened to be present, raise some objection to the work done by the committee of experts, and, as I am always anxious to give all the evidence and information that I can to clear away difficulties, I made a point of asking Mr. Hoyle afterwards what was this trouble, and, as far as I remember, he told me it was in connexion with a line heading. It was on Change that I asked Mr. Hoyle this. I at once said to Mr. Hoyle, "Come up to my office. I will "show you that the committee of experts could do "nothing else." Unfortunately Mr. Hoyle did not come up, and I was not able to do it; but I think that if the whole of his trouble lay in that one case that he put before me, really I could have explained it very easily.

1276. What would you suggest as the best way of obtaining a committee that would give general satisfaction?—Go to the trade.

1277. In what way, elective or appointed; and if so, how?—Put it in the hands of the Chamber of Commerce, and let them select men connected with the cotton trade, or all branches of the cotton trade if you like, or men that shall be subject to the approval of the members of the Chamber of Commerce.

1278. Do you think that the trade at large would be content with a committee appointed in that way?—Was ever anything done that quite satisfied everybody?

1279. (*Mr. Hutton.*) You find from your experience among merchants that they are always willing to meet each other?—My experience among merchants is: "There is my right hand. I will do everything to help you in your work." That is the whole of my experience throughout the time I was acting for the

committee of experts up to the present time. I believe it is the same now, but since 1883 the confidence that the office had has fallen away a good deal.

1280. The confidence of the merchants? — The confidence of the trade generally in the office. If I had to do such a thing I should go back to the trade at once, and ascertain what their feelings are. "Let us break fresh ground; let us have an understanding."

1281. I suppose when abroad you gained considerable experience of the working of these trade stamps? —Very considerable experience indeed; and it was that that obtained for me the appointment of secretary to the Manchester Trade Marks Association.

1282. In that way you understand the importance of one mark not conflicting with another?—Most certainly. I have had to do with the buying of goods in various parts of the world.

1283. (*Chairman.*) You would recommend as advisable the appointment of a committee in some way or other which should be in a position to be consulted by you, or by the office, where it was thought expedient?—To save litigation.

1284. We have dealt with your suggestions as to the place at which the original application should be made, and as to where that application should be dealt with, and the suggestion of the appointment of a committee; is there any other suggestion which you have to make to us with reference to the improvement of the work of the Trade Mark Department in the cotton classes?—Of the Manchester branch?

1285. Yes?—Directly I returned from London and got to Manchester I applied for an extra staff. During my time in London, as the Manchester trade have put it, the office starved; there is a large arrear of work that I cannot touch. In fact, I am going on getting more and more backward from the want of staff.

1286. What is your staff in Manchester now?—My staff at the present time is this: Mr. Madders is the assistant keeper, Mr. Joseph Woolliscroft, Mr. William Given, Mr. W. H. Quinn, Mr. H. Blackshaw, and a man who attends to the cleaning of the office.

1287. (*Mr. Hutton.*) How many does that make?—With myself, six.

1288. (*Chairman.*) What additional staff do you consider would be requisite to carry out the work efficiently?—On the 12th of October 1885, for the work I then had on hand, I considered that two more clerks should be obtained, those being for the duties chiefly of examination and attending to applicants. Subsequently to that, after Mr. Boyle and Mr. Lack had been in Manchester, in July 1886, I made a suggestion that there should be one additional clerk over and above the two already applied for; that was in view of certain eventualities.

1289. You think with those additions the work could be effectually done?—It depends on whether any extension of the services should be required over and above what I have referred to in this letter of the Board of Trade.

1290. (*Mr. Hutton.*) If all the applications of the cotton trade were sent in to Manchester, would that require an increase?—That would include the one extra man that I should want for a special receiving clerk; that would make the increase three. But then if there are to be decisions given in Manchester of any kind or a calling together of merchants, there would be a good deal more clerical work to do, and I can hardly estimate what that would be.

1291. (*Lord Macnaghten.*) If all the work were done in Manchester, would that relieve the London office?—Very extensively in the matter of correspondence alone. When I was in London, in 1885, I think the correspondence of a kind that might be done away with altogether, if it were in Manchester, was very considerable indeed.

1292. (*Mr. Hutton.*) Do you know how many advertisements are sent down to you per week?—Do you mean the average?

1293. I see last year 885 cotton marks were advertised in Manchester out of 1,888 applications. I suppose all those that are advertised are sent down to Manchester?—In the cotton classes?

1294. Yes?—Yes.

1295. Both thread and yarn?—Thread and yarn My particulars are these: Total number of applications received for examination at the Manchester office in Classes 23, 24, and 25 in the year 1886, 1,673.

1296. Not advertised?—No; those are applications. Advertised in the Trade Marks Journal, 887; registered in the Trade Marks Journal, 762. Proportion of marks registered to marks examined, 45 per cent. Number of searches and inspections by fee in Manchester office, 1179. Number of inspections under official letters, 563.

1297. The fee is 1*s.*, is it not, to inspect?—1*s.* per quarter of an hour; but then we are very rapid in our inspection in Manchester, owing to the grouping of the marks; and consequently, an applicant there may get information with regard to three or four marks in the quarter of an hour, which, if a different system were in use, would take a very considerable time to search for.

1298. (*Chairman.*) Beyond the addition to the staff, is there any other point to which you would wish to direct our attention?—The arrangement of the office. There are complaints made of the accommodation. People coming in with new marks do not like to have others looking over their shoulders as to what is going on. At the present time we have only a common table, with no divisions, and no privacy whatever; and therefore an applicant coming to make a search for a new mark, as some of them do before they apply, has it on the table, and anybody about can see exactly what he has got; and it is possible that a sharp fellow may take the idea out of his hand and put it in long before he is aware of it.

1299. Could that be obviated by a re-arrangement of the office?—Oh, yes; but if the extension of work is to be given to the office we should have to have an extension of the office, because the system at present in vogue must be altered. I have now a special search room, a small one, which is also the library as well. That would not answer any longer. We should want two extra searchers there, and there is not really room there, because the large table takes up almost the whole of the room, and two men are quite as many as can get fairly to work there while I am in it. Besides that, transferring those searchers from that room into the general room would enable me to have all the searches and inspections going on in one room instead of changing from room to room, which is unsatisfactory. It would simplify the work.

1300. (*Mr. Hutton.*) What rent do you pay now?—The rent is paid by the Office of Works. The rent for the Manchester office at the present time, I think, is 130*l.* Inquiries have been made with regard to the adjoining office. When Mr. Boyle and Mr. Lack visited Manchester in July last they asked me to make some inquiry with regard to what the other office would be, and I did so, and the information was sent to London, together with the rent.

1301. (*Lord Macnaghten.*) If you had the office in Manchester separate and distinct, as the Manchester people seem to desire, would it be necessary or advisable to have a separate Trade Marks Journal for Manchester marks?—Oh, no; because the trade marks in the cotton trade, to be thoroughly understood, must not be cramped up in form into a small space, but they must be shown as used.

1302. In point of fact I really gather from you that the Trade Marks Journal is not of much use with regard to Manchester marks?—They are published by name and number That, I take it, must be done, because that is really the publication of the advertisement.

1303. (*Chairman.*) You do not recommend that they should be published by a copy of the design in the journal?—No, it would be an enormous expense to the trade. Fancy a man with 2,000 marks; what a tax upon him to have those cut specially.

Mr. J. Fry.

23 April 1887.

1304. (*Lord Macnaghten.*) There would be no advantage in separating the list of Manchester marks from the other marks in the Trade Marks Journal?—It is now in the Trade Marks Journal, separate, at the end.

1305. (*Chairman.*) Do not you think it would be an advantage, when the mark is brought for registration, to require that, even though it is brought in colours, the person bringing it should be required always to bring, and that you should keep an uncoloured mark. What was suggested to us rather by Mr. Bailey was that in comparing them the colours are apt to conceal resemblance, which, if you saw them uncoloured, would be very apparent?—No, I do not find that in the examination. Trade marks are got up very quickly, they are very often sketchy, they are very difficult to decide upon. If they were in colour the design and the arrangement would be clearly seen, because the various colours help the eye to follow the outline of the various figures; but in black and white, as some of the printers send them in, sometimes they are very confused, and cause one to send over to make inquiry as to really what they are.

1306. (*Mr. Hutton.*) You are speaking of the tickets?—Yes, and the sketchy system of sending the marks in is bad for examination.

1307. (*Chairman.*) You do not think there would be any advantage in requiring them to send one in in black and white?—I think the best plan is to send them in as they are intended to be used.

1308. But then the colour is no part of the design?—Granted; but it helps the examiner very much in seeing what is depicted. I am sorry I have not brought some of those that I am now referring to, where the sketches are got up quickly and sent in without any previous examination at the office for the purpose of being accepted or refused.

1309. (*Mr. Hutton.*) A mere outline?—A mere outline, and then they become most complicated, especially in the case of native god marks, and of pictures more or less. For instance, the illustrated weekly papers are very largely drawn upon for suggestions by many of the ticket printers. I do not mean to say by the merchants, but then the printers are very often men who get up these marks. A merchant suddenly receives an order from abroad from a new man, a new constituent, and does not want to use any of his old tickets. He wants to get something new, because if he is getting a new man in Bombay, and he is already shipping cloth, say to Bombay, he does not want to have two people conflicting with the same mark. If he did, this would result: Rustomjee and Sorabjee would come to A and say, "What price do you want for your mark?" A answers "So much." But A is told that B has the same thing half an anna cheaper. These men are very wily; they can stand any amount of talkee talkee, and they do not care much about time. It would cut very much against the interests of the Manchester shipper; therefore he keeps his marks distinct. The merchant sees he can put the order through; he wants a new ticket; he sends for a printer, it may be, if he has not any ready on hand. He says, "What trade mark have you which you can sell me?" "I have this." "Is it registerable?" "Yes," or it may be, "No; I do not know. I have not applied;" but if it is "Yes," then he takes it, and he ships out those goods very rapidly, and puts that trade mark on it, hoping to get the registration. He has not time to wait for the registration in such a case as that; he wants to ship his goods off quickly, and he does not want them to conflict with anything else, yet he wants to have a mark that he can refer to as his own property, because he does not want the native abroad to go and send the ticket home to the Manchester merchant's neighbour, and say, "Now put this ticket on, and send these goods," that would not do. We will take it A is a Manchester merchant; he buys 7 lbs. of grey shirtings for shipment. These 7 lbs. of grey shirtings are made by numerous manufacturers, as Mr. Hutton will, I dare say, endorse. A buys these 7 lbs., and he sends them out to Rustomjee, who is one of his constituents. A. has four constituents in Bombay. He has an order from all four for 7 lbs. of grey shirtings, and he buys the lot in a lump. By buying in the lump he may do them cheaper than if he had to buy 500 for one and 1,000 for another, and so on. To Z he ships these goods under the elephant ticket. I am merely putting common tickets. To Y he ships a cock, to X a native god, and to W a zebu. Z for years has sold A's 7 lbs. cloth ticket with the elephant. This cloth A confines in Bombay—not in Calcutta or other places, but in Bombay he confines it to Z. Z thinks he could drive a better trade (for him) if A's elephant ticket was put on a lower quality of cloth. A refuses. Then Z says, Manchester merchant B often wanted me to give him orders. I will send him an order. He goes to B and orders 100 bales to enclosed ticket; he encloses A's ticket; B refuses. Z says, there is C also anxious to do business with me in Manchester. He sends an order to C for 100 bales with the same ticket. C does not go to the office at all to make search, but he applies as agent for Z. Application accepted. That application is searched for in Manchester and the return goes to London, but eventually it is accepted. Without consent the mark is advertised, and through oversight of A is registered. Now, there A is a very serious loser, because his consent to the registration has never been asked for, and Z gets C to apply for a mark, which he has no right to do, but which he himself does not know is really an infringement of A's mark. Y orders 100 bales of 7 lbs. to be ticketed in imitation of cloths sold by Z as per enclosed stamp or ticket. B has the same stamp cut, and applies, as agent, for registration, being in ignorance of constituent's object. Application accepted; mark advertised. Subsequently A sees it on the table and objects and writes to or sees B. B apologises and assures A he did not know of the existence of his mark.

1310. (*Mr. Hutton.*) Is it withdrawn?—Then, so far as B is concerned, it would be withdrawn; but then he is acting as agent only, not as proprietor. Y orders 100 bales 7 lbs. to be stamped as per enclosed stamp, Y being the Bombay native. In Manchester B applies for registration and is told to get consent of A. B makes search at Manchester office to inspect A's conflicting mark; subsequently he writes to the Comptroller that A has not given his consent, but as the mark will be known by a different name, B asks the Comptroller to reconsider. The Comptroller then waives his objection and the mark is passed on for advertisement. Now, if that mark is not seen on the table, it goes forward and is registered.

1311. (*Chairman.*) What inference do you draw from that?—The native will do everything that he possibly can to attain his ends; he makes use of the name of a responsible firm in England to attain those ends; the responsible firm in England does not know of the existence of the conflicting mark, because they are never told. The first they hear of it is an unpleasant letter or communication from A.

1312. Does that point to any remedy that can be applied?—Consent should be obtained before conflicting marks are allowed to go forward for advertisement.

1313. (*Mr. Hutton.*) Which is not done now?—There is an instance I am quoting where marks have gone forward; where the original owner, the registered proprietor, did not know that such an application was going forward till he happened to see it on the table, so that it breeds ill feeling.

1314. (*Chairman.*) And that you say results from sufficient care not being taken to object to the application on the ground that it conflicts with something already registered before it comes forward for advertisement?—That is it.

1315. (*Mr. Hutton.*) You are, I suppose, aware that a great many firms in Manchester decline to

register at all at the present time?—Oh, yes. Because the publication of the marks on the table offers the opportunity for people who are less particular to come in and copy.

1316. Mr. Bailey stated in evidence that his firm, Ralli Brothers, never register at the present time?—With the exception of one or two god marks supplied through agents, they have applied for nothing for some years, but we know for a certainty that they are obliged to go on making new marks, and that they are using these marks that are not registered. The peculiarity of the cotton trade is this, that you cannot stop; you must go on. Then if you are obliged to go on making marks, how are those marks to be made? There is not an endless variety of objects to take. Then these single objects that are registered should be protected by all means in your power. But why not make use of the B list marks worked up in a certain way, disclaiming any proprietary right to the particular portions, and allowing those to go forward with a disclaimer. The marks must be made. The question is, where will you get your means of making them. The registered proprietor of a particular object should be protected.

1317. I suppose in such a case as this you think that the work of the office would be very much increased and the office very much enlarged?—No, I do not say that the office would be very much enlarged.

1318. If there is more registration under that with consent or by limitations?—There are a large number of marks coming forward now that really ought not to come forward.

1319. You know nothing of the marks which are refused?—Oh, yes. I get those now,

1320. Do you get copies of those?—Yes, I get copies of those now.

1321. Every mark which is sent in—every application?—Yes, now.

1322. I see in the returns given here that 32 per cent. of the applications were refused last year?—Forty-five per cent. I gave as the return of those passed in the cotton classes. Forty-five per cent. only are proceeded with.

1323. I have it down here 58 per cent. of the cotton piece goods?—For what year?

1324. Last year. There were 8,866 applications. No, I am wrong, it is several years altogether?—After the committee of experts had done their work the new marks were dealt with by Mr. Lack. There was very great difficulty in arriving at what a new mark was, and what is was not, and when Mr. Lack came to Manchester in 1879, after going through the new marks, a large number of which had been deposited in Manchester and a large number applied for in London, he took back a number of marks to put before the Master of the Rolls, who was then Sir George Jessel. Sir George Jessel considered these marks, and he gave certain directions. Mr. Lack afterwards told me of these directions; amongst a lot, there was one of a rose and horn, which, I believe, in another class had been the subject of application. I think it was in the Sheffield class. The Master of the Rolls in dealing with this case said: "If a man "entering into trade honestly wishes, in order to "show the world that his goods are his manufacture, "to have a trade mark and show a distinction, he "would take the newest mark anybody could suggest "to him, utterly unlike anybody else's." Keeping that in view, I would take this mark. Here is a figure holding a kettle; the kettle is the private mark of another firm. The quotation of that kettle was made against this mark, but this was sent on for advertisement, and appeared on the table. When the owners of the kettle saw it on the table they complained. They said they did not consider it right that that mark should have been passed, having this portion of their own on it. This is a copy of a letter which was sent to the Comptroller at the time about it, a copy of which was sent to me.

1325. (*Lord Macnaghten.*) Is that a letter from the owner of the kettle?—Yes. "52,786. There is "now exposed upon the table of the Manchaster "registry an application which has passed the Trade "Marks Office of the above mark, the acceptance of "which should not have been allowed until our con- "sent for the use of the kettle, No. 18,434, had first "been obtained by the applicant." "This is the same "firm which was allowed to register as part of a com- "bined mark—a line heading (51,614) without dis- "claimer, notwithstanding that all headings were "placed by the Manchester experts in the B list as "brought under the notice of your office by our letter "of the 30th April to the registrar. This mark of the "girl and kettle illustrates the argument we used in "that letter on pages 5 and 6, where we draw the re- "gistrar's attention to an application not then accepted "by the office for the registration of 'two dogs and "scorpion.' In the case of the mark 52,786 the girl "we should take to be an object incapable of separate "registration on account of its similarity to many "other girls in the B list, but the kettle is a private "mark of which we are the sole owners, and we "assume it is the addition of this kettle which gives "the combined mark any claim to its present admis- "sion to registration. We were asked by the keeper "of the Manchester registry if we had any objection "to this registration, and we informed him that we "objected to the kettle on account of the prominent "way in which it was displayed, but that the appli- "cants could doubtless arrange with us as to its use." This is dated 31st May 1886. That is before Beith, Stevenson & Co.'s letter, which was the 1st June. "As this is another instance of the appropriation, "undesigned, we are quite sure, of one of our private "marks, we should take it as a favour if you would "also place this instance with copies of the marks in "question before the President of the Board of Trade "as further illustrating the points brought under the "notice of the registrar by our letter, page 6, of the "30th April last, and by a recent communication "from the Manchester Chamber of Commerce." That relates to that mark. There is a private object worked up. It may be with another private object or not. One of the resolutions of the committee of experts was that no firm was to be allowed to apply for the private mark of another firm as forming a portion of a new mark.

Mr. J. Fry.
23 April 1887.

1326. (*Chairman.*) If you were to exclude all such objects would it be possible to get new marks at all. I can quite understand that the kettle may be put in such a prominent way, as that it is, you may say, the leading idea of the proposed mark; but if you were to exclude from any sort of combination anything that had ever been registered before, would not you very soon come to the end of the possibility of marks?—That is why I say it will not do to draw any hard and fast line. Let the merchants settle the matter. Draw the attention of the new applicant to the fact; let him go and make his arrangement. That will be done much more simply in Manchester by talking the matter over than by any correspondence. It is an awkward thing for the first intimation to come to the registered owner of the fact that somebody else has applied for his mark by seeing it on the table. There is a feeling of irritation arises. These things might be talked over and arranged between themselves much more easily; they get a slap in the face when they see the mark on the table. Of course I speak from my experience abroad and in England as a merchant.

1327. (*Mr. Hutton.*) There was the instance of the Pleiades, where the mark had been registered by one firm and refused to another, and then afterwards registered for another. Do you know that mark? It was in the form of five children?—Yes, seven boys. Originally the mark sent in was what is called, I think, the Chinese twins. This is the original mark sent in; then this was sent in, then Lyon Lord & Co. applied for this mark called the seven boys. I drew their attention to the two existing marks, and Mr. Comber, who came down to the office, said, "Oh well, I will not go on any further with my mark," and

Mr. J. Fry.
23 April 1887.

he sent me a letter saying that his firm did not intend to go on any further, but in a short time they received a notice from London to say they could go on with it. Naturally when they were told that, it made them a little uncertain as to what the Manchester office could or could not do, or what assistance the Manchester office was to them; however, they did not go on with it. Eventually another mark was sent in. Of course the quotations upon it contained all the previous information.

1328. You sent up the report?—I sent up the report, but then this came down afterwards for advertisement on the table. Directly it was seen on the table they all took objection to it. Lyon Lord & Co. were very vexed that such a mark should be allowed to go on the table after the other mark had been withdrawn; it caused a great disturbance.

1329. On what ground was your notice ignored?—I do not know.

1330. When did that occur; was it since you went down to Manchester?—Yes; I see this application is dated 9th March 1886.

1331. No grounds were given for refusing the one and passing the other?—I get no grounds at all. The information does not come to me.

The witness withdrew.

Adjourned to Wednesday next at 11 o'clock.

Board of Trade, Whitehall.

Wednesday, April 27, 1887.

PRESENT:

LORD HERSCHELL. | LORD MACNAGHTEN.
THE EARL OF CRAWFORD. |

LORD HERSCHELL IN THE CHAIR.

Mr. EDMUND JOHNSON re-called, further examined.

Mr. E. Johnson.
7 April 1887.

(*The Witness.*) Before commencing to-day I thought it well to make the observations which transpired at the last meeting of the Committee perfectly clear on the question of the series of marks by producing some specimens of those I have registered (*producing same*). *That* is the form of registration under section 66. These are Bass' and Allsopp's labels. They vary on *that* side simply in the denominations of the goods, and on the other side principally in the central figures. The advantage of section 66 is that for foreign purposes Bass or Allsopp when so registered can obtain a special certificate for each one of these marks, omitting others, or separate certificates for each. I do not think they grant a general certificate.

1332. (*Chairman.*) I think you were dealing with the question of some of the decisions on the question arising under the Act?—I had closed, so far as my own remarks were concerned. I have very few points for to-day. The first is compulsory registration; the second, trade marks in connexion with patents and secret preparations; and the third, the system of following the origin of the application of a trade mark. (That is simply a question of procedure at the Patent Office.) Then, short phrases as trade marks; a further remark as to the Form F.; inspection at the Patent Office under search fees; and a few statistics which are really for the information of the Committee.

1333. First, as to the compulsory registration; what have you to say?—The day may not be far distant when, under a more settled state of the law, and a still greater appreciation of the value of trade marks by the public, it may become necessary to consider whether registration should not finally be made compulsory. In the early stages, when pressure was first put upon the Government to establish a system of registration in this country, which I well remember, principally during Lord Palmerston's Government, when Mr. Milner Gibson was President of the Board of Trade, there was a great diversity of opinion as to whether registration should be voluntary or compulsory. Finally, the Select Committee, whose meetings, at the request of the late Mr. Roebuck, I attended in 1862, to which was referred the Government Bill, and that of Mr. Roebuck, who acted as Chairman of the Committee, decided, I think by one vote only, against registration. I believe the Solicitor-General, then Sir William Atherton, was against registration. On the other hand I think Sir Roundell Palmer (then Attorney-General), the present Lord Selborne, was in favour of it. Practically Lord Cairns' Registration Act of 1875 has rendered registration compulsory by reason of the advantages conferred on those who register under the Act. But this, it is found, as might almost have been anticipated, only applies to the honest use of trade marks. Those who live by infringement seek not registration, nor do they need any protection which could be acquired under it. It is, in fact, only under a system absolutely compulsory that infringements can be met without any question of rights transpiring, but merely by rendering it a misdemeanour to use a trade mark at all whilst unregistered. Summary procedure could be brought to bear in this way; but I do not propose here to pursue this question further, inasmuch as it is a matter which, perhaps, more concerns the Select Committee now sitting on the Merchandize Marks Bills, in the House of Commons. Your Lordships will quite follow the point, that the infringer must be restrained in some other way rather than requiring him to register as a voluntary act.—I now come to the next point, "Trade "marks in connexion with patents and secret commu- "nications." Some very nice questions arise under this head. There is, first, the case of a patented article, to which the patentee gives a certain name, and also, nowadays, registers that name as a trade mark. In such case, in view of the principles laid down in the various decisions, it cannot be questioned that the trade mark title given to the goods, whether registered or not, must lapse with the patent; whilst during the existence of the patent, if a similar article be prepared by another process, even then trade mark rights must fail. I think the case of Young *v.* Macrae, which Sebastian gives, at page 114, goes to this extent.

1334. That is the paraffin oil case?—Yes. Another case which may arise—I am not aware of any decision under this head—is, when from want of novelty, or any other cause, a patent has failed in being upheld when tested in court. In such an instance, would a fancy name given to the article manufactured, whether

registered as a trade mark or not, then at once become *publici juris* to the detriment of its originator? Next, as regards a secret preparation, to which a fancy name is given, and registered as a trade mark. I will quote an instance of this, the word "Spirone." "Spirone" is the name given by Dr. Churchill, the renowned doctor for chest complaints, to an inhalant which is unpatented, and it is so called by the company, who manufacture the article philanthropically. They have a dispensary in the Marylebone Road, where patients are treated gratuitously every day. Two or three philanthropists purchased the secret from Dr. Churchill. "Spirone," which is an unpatented inhalant, is so called by the proprietors. Is the use of the word, as the name of the new article, destructive to its validity as a trade mark, *i.e.*, is "Spirone" to become synonymous with "inhalant"; or is "Spirone" always to be held to be only the trade mark applied to the inhalant after being so registered? If any one making an inhalant in imitation is to be able to sell it as "Spirone" can he be restrained from going one step further by appropriating the trade mark, and moving the court to cancel it on the register as being the name of an article become known in commerce by the introduction and use of it by its inventors? The status of such marks should be clearly settled by statute in preference to being left to be fought out in each instance in court.

1335. Have you any way in which you could suggest a settlement, because it does not strike me at first sight as such an easy matter?—I am quite aware of the difficulty. I bow to the superior knowledge of the Committee, and trust they may be able to solve what I find myself incapable to deal with at the moment further than to point out the difficulty. In the recent decision in the Appeal Court in the "Gem" case, Lord Justice Lopes held that in his opinion the rule is:—"That where a name or word "was originally, or has come to be descriptive of "the article to which it is attached, so that, while "indicating what the article is, it does not connect "that article with any particular manufacturer, the "name or word cannot be protected or registered "as a trade mark."

1336. But it would be registered, I suppose, before it became so known, and the knowledge would arise after the registration?—That is precisely, on behalf of the trade owner, the danger I wish to point out. This, I assume, is to be interpreted as indicating that an application to register under such circumstances should always be refused; and again, that any such registrations already effected are bad, and can be cancelled when the courts are moved for such purpose. This is a most serious aspect of affairs, as not only involving old registrations and future applications, but leaving the Patent Office almost in a state of chaos in their procedure as to all applications pending at the present time.

1337. (*Earl of Crawford.*) Do I understand you rightly thus: that to take the "Spirone" as an inhalant, if that has become sufficiently known to identify the word "Spirone" with all medicaments which are taken for the benefit of the lungs by inhaling, you mean that the word "Spirone" will no longer be applicable as a registered mark because it has become descriptive of a certain thing, and therefore the courts will declare that they should no longer call it "Spirone," although, by their action of inventing this thing and giving it this name, they have brought it into existence as a synonym for inhalation; is that your meaning?—That is my fear. I fear that this decision may tend to that, and so strike at the root of the value of trade marks, inasmuch as the more a man succeeds in making his trade mark known, if that principle is accepted, the sooner is it to be destroyed as a trade mark. Would it be possible in any way to devise a system under which the name given to the article, if also a trade mark, can be protected further than if it were merely the name of the article and no trade mark question existed in connexion with it? The patentee has had his protection, he has had the advantage of the 14 years during which his monopoly existed, and in exchange for that, at the expiration of his term, naturally he forfeits the right to the patent, and with it goes the title which he gave to the article. But the inventor of the secret process has had no such advantage, he has had no monopoly.

1338. He has, practically, paid nothing to the State to secure protection from the State, and he gave nothing to the public?—Could we then suggest a tax upon secret processes which would entail a contribution to the State?

1339. (*Lord Macnaghten.*) There are not many of those things, I suppose; is it worth while considering it?—Very much so, in connexion with patent medicines; perhaps articles which some would say ought not to have any special favour conferred upon them. Certain secret processes may, however, be of a very useful character.

1340. (*Chairman.*) Is it not beyond the functions of a trade mark to describe the process, to use the word indicative of the character of the article; is not the purpose of a trade mark rather to protect a particular manufacturer?—I think so, in the first instance certainly. Where there is the attempt to create the double use it is simply in this way, that either there should be a system of protection, or a trade mark ought not to be accepted if it is really the name of the article. Give no doubtful rights.

1341. (*Earl of Crawford.*) According to that, I take it you would not object to give the trade mark provided it were called "the Spirone Inhaler," but you do not allow it to be called "Spirone" alone?—That was to a very great extent the suggestion I gave to the proprietors in this instance. This was my own case. I recommended them to describe their article as "Dr. Churchill's Inhalant, trade mark 'Spirone.'" In that way they would keep themselves perfectly safe, because the word "Spirone" in no way loses its trade mark element.

1342. And they are not selling "Spirone"?—They are selling an inhalant, and they are "trade marking" it, to use an American term, "Spirone." The principle of connecting the article with the particular manufacturer would seem to need some limitation, so as only to apply to the generic terms under which commercial products are known, in fact to such designatory terms as are contained in the dictionary; otherwise the more energetically a manufacturer makes his trade mark known under advertising it in connexion with the goods he produces, no sooner is he to attain success than it is to follow as the inevitable result that his own good work is to effect the destruction of his trade mark, that is, assuming that, following the ordinary system so constantly pursued in connexion with trade marks, his name has not always transpired in connexion with the goods. True, in the "Gem" case, if the evidence established that guns were publicly asked for and sold under the designation of "Gem" as a particular kind of gun and not as the manufacture or selection of one person only, the right in the trade mark must always fail; but I am looking to the danger involved in regard to trade marks generally if the view enunciated by Lord Justice Lopes be applied in all cases. Many, indeed, are the instances under present usage of valuable trade marks in which there is no indication of the manufacturer. The public do not know the manufacturer at all they simply buy under the brand. Certain goods, however, are asked for by the public under the name of the manufacturer, wholly irrespective of the trade marks, and some again indiscriminately. Colman's mustard is as well known as such as under the term "Bull's head mustard," which is its trade mark; whilst again "Ford's shirts" are universally recognised under the "Eureka" trade mark, wholly without the name of "Ford." When the manufacture, importation, or selection of goods branded in a particular way has led to such goods becoming known under the trade mark names which they bear, it would be a dangerous result if trade mark rights are then at once to fail,

Mr. E. Johnson.

27 April 1887.

unless the owner of the mark has from the first connected his name with the article bearing the trade mark. I see the difficulty involved in dealing as a matter of legislation in a final way with such points as these. I simply throw out these remarks in the hope that some useful result may follow.

1343. (*Chairman.*) Your next point, I believe, is: "following the origin and application of a trade "mark"?—Yes. In settling how far a descriptive element is to be recognised in tracing origin, or following the use of the goods to be covered by a trade mark, some fixed principle might be laid down for the guidance of the Patent Office. To illustrate my meaning, I would ask to take the common word potato, offering for consideration the following remarks in connexion with it. The potato is grown by a farmer who employs a labourer. The land in which produced needs manure. It has to be tilled; various implements are used, including a spade, a hoe, and finally a fork. The potatoes when grown are packed in a sack, and sent to market in a cart. When ready for cooking they are placed in a saucepan, perhaps by hand; taken out with a spoon, placed on a dish, eaten off a plate, with a knife and fork; possibly by a man dressed in a coat, wearing boots. The coat is made of cloth, the boots of leathers, and, if insufficient exercise taken by the man, indigestion follows. Where am I to stop? Is every word I have just mentioned to be deemed ineligible to be adopted as a trade mark by the potato grower if he desired one to mark upon his sacks, as is done by hop growers, millers, and others. What I have now mentioned is only an extension, intentionally *ad absurdum*, of what already mentioned in regard to "Mariner," as applied to rum, being unacceptable for rum because a sailor drinks it, equally as "Navy" has been regarded in connexion with soap, because it can be used on board ship. The principle of the Patent Office under this head needs settling under some limitation, or to be really entirely discarded. I do not myself see the necessity of following the use of a trade mark so long as it is not descriptive. I think the limitation might end there.

1344. (*Earl of Crawford.*) The word "Navy" you say has been refused?—Refused for soap, because soap can be used on board ship or in the navy.

1345. Was there the idea that that special soap was the one used by the navy, thereby giving it as it were a Government stamp?—I think that was not in the least the intention of the applicant. Field's United Service Soap is well known.

1346. (*Lord Macnaughten.*) Take the case of "army razor"; people sell army razors implying that they are supplied to the soldiers?—Of course there is occasionally on the part of traders a hidden motive in these applications under which they afterwards by a little straining can abuse the trade mark they have obtained.

1347. (*Chairman.*) Then you come to "short phrases"?—Yes; some little confusion prevails on the part of trade mark owners as to what they are entitled to claim registration for under this head. In the tobacco trade there are many phrases of this character which have secured reputation. I believe that attempts have been made in some instances to uphold rights in the courts, but not having been concerned in the cases, and there being no reports, I have been unable to trace particulars. Certainly phrases have been accepted at the Patent Office from time to time, such as, "Right sort of tobacco," "Pink of perfection," "Cherry ripe;" whilst "Cheer up," "Bound to win," "Honour bright," "Night and morning," have been refused. It could not for one moment be suggested that a whole chapter from a book should be accepted, but I do not see why, if deemed to be a useful trade mark, an applicant should not be entitled to claim registration for a short sentence in the event of any less restrictive definition of the nature of that which I have suggested before the Committee being adopted in respect of word trade marks.

1348. Of course you exclude short sentences which would be in any way descriptive of the article sold or of its qualities?—Certainly, unless quoted from *Punch*; or anything of a facetious character which really was deprived of its descriptive meaning in connexion with the goods.

1349. What is the next point?—The next is as to the Form F. Following up what I have ventured to suggest in regard to the re-institution of the declaration as to user in connexion with old marks now so claimed, and also as to a declaration when any user at all prior to application, I now would venture to suggest going one step further, that is, that when there is not any user at all, the applicant should so specify in the Form F, but in such case without any declaration. I think it would be well to have an admission from an applicant who merely lodges an application to-day in connexion with a trade mark which he intends to use in the future, that he has not used such trade mark at all, that it is entirely a new idea. It would clear the ground very much, where the same mark has been used already without the knowledge, or even with the knowledge, in connexion with an improper application, of the new claimant. Perhaps I should here hand to the Committee the old form of application, with the declaration attached to it, and also the form now in use. It will be observed in the old form the statement was, "I have used," or "My said firm has used," and so on. That is an absolute statement. In the declaration in support it is, "I solemnly and sincerely declare the statement "signed by me is true." It was a much stronger statement, and an agent's signature was not accepted at all. It was a personal declaration, and no agent could make it. The present form is simply, "Who claims to be the proprietor," which is a very loose form.

1350. What is the next head?—Inspection at Patent Office under search fees. Some increased accommodation I have, since last attending before the Committee, been requested to mention, would be very much appreciated by the public. At present, when a search is being conducted by one person, the limited space available for the purpose at the Patent Office, notwithstanding the courtesy and attention of the officials there, renders it exceedingly inconvenient for others to refer to documents at the same time. A special room for the purpose would be very welcome to the public.—I now pass to "statistics." It may be interesting to the Committee to note that, tabulating marks recently advertised, I find that, taking the first 13 journals issued for this year, out of 1,546 marks advertised, so many as 538 are simply word marks, leaving 1,008 devices and combination marks. Of the 1,546 so advertised 1,362 are new, the remaining 184 only being claimed as old marks (422 of the 1,546 passed through the office under my charge). Going back to the journals first issued, taking numbers 1 to 13, the total number of marks advertised was 1473. Of these, 1,307 were old marks and 166 new marks. The number of word marks was 229, against 1,244 device marks. Comparing the earlier with the later period, the numbers of old marks and new marks respectively are about reversed, whilst the increase as between 229 and 538 word marks establishes how the tendency now is to adopt this class of mark in preference to devices. The statistics for January last of marks registered in the United States of America show 732 registrations as having been completed, bringing the rotation number there up 14,011. That is since their new Act, which was in 1880. During the same period 28 labels were registered under the system, as referred to in my recent evidence, bringing the rotation number under this head up to 5,100, thus showing a proportion of a little more than one to three of trade labels as compared with trade marks.

1351. Is there any special legislation with regard to the particular labels in the American Act of 1880?—I think it was done previously; it is older. The American trade mark law was suddenly discovered to have been in a state of disorder from the first. The whole of the earlier registrations effected at Wash-

ington were found to be invalid, and re-registration ensued after the passing of the new Act.

1352. Could you furnish us with a reference to the legislation which provides for the labels?—Certainly. It shows clearly that the system is appreciated,—answering the question your Lordship was good enough to put to me on the last occasion, whether such a label registration would in this country be likely to be appreciated. If they have 5,100 labels as against 14,011 trade marks, that is a very large proportion. In France the registrations for January were 385. I have not been able to obtain recent statistics of other countries.—For the convenience of the Committee, in an order, however, not following the lines of the evidence, I will now mention the different points referred to by way of summarising them:—

1. Necessity for increase of staff in Trade Marks Department at Patent Office.
2. Period of advertising applications to be reduced to one month. Period for lodging counter statements to oppositions to be also reduced to one month.
3. Unnecessarily large blocks for advertising applications should not be accepted.
4. Applications from single persons trading as firms should be accepted in the name of such firms, without disclosing constitution of the firm.
5. Trade committees might be appointed for settling trade questions.
6. Some rule should be laid down for the guidance of the Patent Office in dealing with words of foreign origin, particularly in view of convention.
7. Comptroller to be authorised to accept labels (when necessary to supply such) for certificates, although not corresponding in minor non-essential elements and colour with the originally-filed representations, noting the variations beneath the representations attached to the certificate.
8. Abolition of appeals to the Board of Trade.
9. Devices, when descriptive emblematically of the goods to which to be applied, should not be registered.
10. Some fixed principle should be laid down for dealing with conflicting marks, in connexion with which euphony and meaning are involved.
11. Board of Trade directions, so far as affecting the public procedure, should be published.
12. The use of marks not to be followed.
13. There should be some clear definition as to what is intended to be covered by the term "Brand." Brands should be recognised in all trades.
14. The late Master of the Rolls' "Rule of Three," with regard to old marks, as formerly existing, should be re-instated, without having to go to court.
15. Marks refused at one period should not be accepted from others until after notice to original applicants.
16. Statement as to "user" subsequent to 13th August 1875 should always be inserted in the Form F. If no user at all, that fact should be stated by applicant. Whenever any "user" claimed, such user should be verified by declaration.
17. It should be laid down that a "user" need not necessarily be in bodily connexion with the goods. User by way of price lists, circulars, show cards, and in other ways, might be recognised as sufficient.
18. The exact status of added matter should be defined and some limitation enforced as to what should be accepted under the head of additional matter.
19. There should be an arrangement introduced under which, on payment of an extra fee, the dealing with applications could be expedited.
20. Where the registered owner is no longer at the registered address, and his address cannot be ascertained, there should be some kind of substituted service or notice, or advertisement should be adopted in connexion with applications for registration of marks, conflicting in a minor degree with the marks of any such missing owners, and discretionary power given to the Comptroller to dispense with consents as now insisted upon.
21. Trade mark cases to be referred to one judge.
22. Provision should be made for the protection of registered owners of trade marks in the use of their marks as a whole, when portions omitted under the registration by order of the Patent Office.
23. Necessity for statutory definition of trade mark rights in connexion with words applied to patented articles and secret preparations.
24. In view of the uncertainty as to the justification of the office in accepting clauses explanatory of the variation of common descriptive terms appearing on the face of a mark in connexion with a single trade mark, in view of section 66, provision should be made to cover what has already been done, and what will in the future be done under this head.
25. Provision for registration of short phrases should be made.
26. Representations of marks should be applied to official notifications and goods covered should be enumerated.
27. The present legal certificate should be superseded by a form of certificate suitable for general use, and not restricted to any particular legal proceedings.
28. There should be some provision made with regard to the granting of certificates of refusal in connexion with new marks, and generally with regard to such certificates some improvement should be made, and a more palatable name adopted, and so, if possible, rendering the certificate capable of securing registrations abroad.
29. Provision should be made for the acceptation of disclaimers of common devices forming portions of new marks.
30. Disclaimers in connexion with common words should not be insisted upon when such words form portion of the name of applicant.
31. Particulars of disclaimers should be published in the official journal with the applications to which they refer.
32. Fees on application to be increased and decreased on registration, thus again equalising.
33. Classes so capable should be subdivided, and a fee chargeable in respect of each sub-division in which application made.
34. The fee for expediting an application as referred to above might be 1*l.* or 2*l.*
35. One certificate to be issued for use in foreign registration although mark represented by many numbers in consequence of being registered in various classes. Fee should be 5*s.* for one class, and for an additional fee of 10*s.* any number of classes should be included.
36. The fee for change of address might be 1*l.* first mark, and 2*s.* for each subsequent mark.
37. Searches of all descriptions, whether documents or register should be uniformly charged at 1*s.* per quarter hour.
38. Double fees where an applicant has to apply to London and Sheffield in respect of the same mark in the Sheffield classes should be abolished, unless a general system of sub-divisions adopted in other classes.
39. Before the abandonment of an application is noted at the Patent Office, notice should be given to agent, and failing completion to the applicant direct. Section 63 should be permissive.

Mr. E. Johnson.

27 April 1887.

40. A new definition of what should be registered as word marks to be settled.
41. In section 65 the word "classes" should be "descriptions."
42. In registering under a series (section 66) the right to vary the mark in any further form without additional registration should be given.
43. Section 67 to be varied by including the plural so as to cover trade marks not printed in one colour only.
44. In section 69, reference is made to a "first" advertisement of an application to register; the word "first" should be omitted.
45. Section 73 is unintelligible, and should be fully considered in further legislating on the subject of trade marks with the view to amending or dispensing with same.
46. Section 75 might be modified to the extent that before the word "registration" in the sentence "Registration of a trade mark shall be deemed "to be equivalent to public use of the trade "mark," "Application for" should be inserted.
47. The sanction to grant licenses so far as trade marks are concerned should be withdrawn from section 87.
48. Under section 91, the powers given to Comptroller for rectifying slight errors should be somewhat extended to the extent of revising a claim by reducing it but not to enlarge it.
49. A simple system of depositing labels or other printed matter *qua* copyright not including anything of the value of a trade mark might be introduced, under which a certificate, such as issued at Stationer's Hall could be granted, and which could be used in support of rights at common law.

It only remains for me to thank the Committee for the patience and attention with which I have been listened to.

1353. I am sure the Committee are very much indebted to you for the assistance you have given them.—It is really the interests of those I represent which has inspired me to venture to encroach so much upon the time of the Committee. Were it not for this Committee sitting, there certainly would have been an agitation outside on the subject of trade marks; but so much confidence is felt in your Lordship, and the members of this Committee, that it is hoped when your report receives the proper attention which it naturally will from the Government that we may venture to look forward to a short Bill this session, dealing with at least some of the important questions that have been brought under the notice of the Committee.

The witness withdrew.

Mr. E. de Pass.

Mr. ERNEST DE PASS called in and examined.

1354. (*Chairman.*) I believe you are a Fellow of the Institute of Patent Agents?—I am.

1355. You practice as a patent agent, and also in the registration of designs and trade marks?—I do.

1356. There are certain points upon which you desire to give evidence relating to the working, I believe, of the designs section of the Trade Marks Act?—Yes.

1357. The first point to which you wish to direct attention is the system of examination now pursued?—It is. My contention is that the Act does not provide for examination. I wrote to the Board of Trade about it, and they referred me to section 47, sub-section 6. I wish to submit that this section 47 does not state that the Comptroller is empowered to make any search to compare designs, as to whether one design infringes a previous design or not. When I wrote to the Board of Trade they referred me to sub-section 6, which says:—"The Comptroller may, if he thinks fit, refuse to register any design." I hold that that may be taken to mean that he may refuse to register a design which is not a subject for registration, or if it be contrary to public morals; but not on the ground that someone else has registered a design which it is likely to infringe.

1358. Do you suggest that that should be provided for? You think the Comptroller ought to examine previous registered designs?—On the contrary, I think there should be no examination at all as to the designs.

1359. (*Lord Macnaghten.*) Do you mean if one design is brought to-day, and the same one is brought to-morrow, and another the day after that, he would be bound to register them all?—I think so. It used to be so, and there was never any trouble. I believe nowadays there is more trouble than there used to be under the old Act. If we do not agree with the Comptroller's decision we must appeal to the Board of Trade. That is an expense which clients do not care to incur. They are of opinion that there ought to be no examination. If their rights are infringed they are perfectly willing to go to a proper tribunal—the court.

1360. (*Chairman.*) Would not it diminish the value of a registered design if two or three different people could truly publish in relation to it that that design was registered?—I do not think that these designs ever so nearly clash with each other as to infringe one with the other. I have had a good many years experience of designs under the old law and under the present.

1361. (*Lord Macnaghten.*) If you look at section 50 it says:—"When a design is registered the registered proprietor of the design shall have copyright." That is inconsistent, surely, with their putting upon the register exactly the same thing, or a thing colourably imitating it?—That depends on what is colourably imitating it; that is the Comptroller's idea, that it may be colourably imitating it. We have to argue the point with him. If we do not agree, as I said before, we must go to the Board of Trade.

1362. (*Chairman.*) The Act does seem, as has been pointed out, to contemplate that question being considered, otherwise you would give copyright in the same thing to two different people for five years. It would require some provision altering section 50?—The old Act worked very well. There was no trouble under that Act; there was no search and no examination as to whether one design was an infringement of another.

1363. (*Earl of Crawford.*) Would not it rather come to the difficulty that the office would therefore be receiving fees for the protection of a thing for which, if they were to go to the court, they would not obtain that protection?—It is exactly the same thing under the Patent Act. There is nothing in the Patent Act to prevent me patenting my hat every day. I do not hold at all with any system of examination.

1364. Whether in trade marks or in patents, do you mean?—Well, I am not speaking about trade marks. I should not like to say very much about the trade marks, though I have very strong views upon that matter.

1365. (*Chairman.*) Do you mean in regard to designs?—I mean more with regard to designs. I say the Act does not provide for the examination.

1366. Are there many designs refused on the ground that they do infringe prior designs?—There are some. I can only speak from my own experience, and the experience of one or two of my confrères. If a design is refused we cannot see the design that we are supposed to infringe. It is not shown to us. If we want to know whether it does infringe a certain design, we must go to the expense of making an application on a stamped form, and forward two copies

of our design, in order to be informed whether such a design has already been registered.

1367. In case of an appeal to the Board of Trade, you would see the other design that was supposed to conflict?—I have never gone so far myself. My clients have let the matter drop, saying, "I will not trouble any further about the matter."

1368. Is that all you have to say on the first point, of the examination?—I think so.

1369. Your second point is the length of time occupied in registering a design?—Yes; under the old Act we could get the design registered the same day. Now it is three, four, five, or six days, sometimes I have known it to be longer. I wrote on two occasions to the Comptroller asking him how long it took to register a design, but I have never had a reply on that point.

1370. In your experience how long does it take on an average?—Five days or so, and then there is a great uncertainty when the papers are left whether it will not be refused on the ground of prior registration.

1371. I suppose the length of time arises from the fact that there is search made?—I expect it is so. When the Designs Office used to be in Whitehall, we could get a design registered there in two or three hours. They certainly used to make objections; but then the objections were that the design was more useful than ornamental, but I think that was sometimes to get the larger fee. There was a 10*l.* fee under the Useful Designs Act, and 1*l.* for certain classes. Now it is 10*s.* for every class I believe. The uncertainty whether the design will be registered or not is rather annoying to manufacturers, because they cannot issue their goods without stamping them with the registered number.

1372. I see the first sub-section of section 47 is: "The Comptroller may, on application by, or on "behalf of, any person claiming to be the proprietor of "any new or original design not previously published "in the United Kingdom, register the design under "this part of this Act." Those are the persons entitled to register. There must be somebody to judge of that, surely, whether it is new and original?—Well, but then do you make the Comptroller the judge of that?

1373. I should have thought so, from the Act in the first instance?—I know of a case in which I had a design refused, or it was going to be refused, in view of a prior design; but it so happened that I knew the prior design, for I was the agent for both the applicants. It was a bag handle. One design was in the shape of a stirrup, in fact it was a stirrup, and the other was a horseshoe. When I went and saw Mr. Whittle, the Registrar, I remarked: "There "must be some mistake here, because I am the agent "in both these cases," and I certainly would not recommend one client to register a design when I had registered the same design for another client. I said: "If you look at *this*, you will find that it "is a stirrup, and that the other is a horseshoe." He replied: "Well, yes, it is so; and under those circum-"stances I shall pass the design for you." But if I had not known what it was it is very possible I should not have been able to see the design which was supposed to be an anticipation.

1374. (*Earl of Crawford.*) Would it meet your views if the Comptroller were to give his reasons for refusal?—I might answer that when I come to another point.

1375. (*Chairman.*) Your third point is the rules laid down as to the number of figures to be shown. What have you to say as to that?—According to the instructions issued by the office we are only allowed to show two views of an article. Now I will take this inkstand for instance. Every side of the inkstand might have a different ornament on it, or a different design. How can I show that design if I am limited to two views. If I show it in perspective you know that to a certain extent distorts an object. The part of the inkstand which is further away from me would be smaller than that which is in the foreground.

1376. (*Earl of Crawford.*) Could not you do that by showing an inkstand as a whole—as one, and then putting out, as it were, the four sides—projecting the four sides?—Then I exceed two figures. I am only allowed two figures.

1377. Would not the four sides, as it were, joined together, projected, be considered as one figure?—It just depends on how the Comptroller would take that. It certainly would not be showing the sides of the inkstand as they would appear.

1378. (*Chairman.*) It would meet your view, I suppose, if it were to allow more than two figures where it was necessary for the purpose of showing the design?—I think so. I know on one occasion I had to register a box. It was under the old Act, and every side of the box contained a different design. Under the present ruling, or the present Act, I suppose I should have had to register it twice—two figures as one design and two figures as another design. I do not say that Mr. Lack would hold to that if I were to explain to him that it would be an impossibility. But then we are also very much limited to space. We sometimes have to draw designs very small, because it is only foolscap size that we are allowed. Formerly we could lodge any size drawing that we liked.

1379. Your next point is the length of the term of protection?—I do not think I will trouble about that. But there is one question before that—inspection of designs in force. I cannot understand why we are prevented from examining these designs. Why should they be kept private during copyright? Why should they be kept private any more than a patent? A patent is not kept private. We inspect all the patents that are lodged as soon as they are published, or as soon as they are completed. A client comes to me and says: "Can you tell whether that is registered or not?" I have no means of telling him unless I pay a fee and send off two drawings to the office, and then I must state under what class and possibly the names of the parties who have registered before. It is not always possible to do that.

1380. In that case do you get inspection, or do they merely tell you?—They merely tell us by correspondence.

1381. So that you are not able to judge yourself?—Not able to judge at all. I know that it is a point which is objected to by the patent agents, not being able to inspect designs when they are registered.

1382. Is that something new?—No, it was always so. When these designs had expired we were able to inspect them. I can see no reason for keeping them private after protection.

1383. Do you know in the history of the legislation what was the reason for protecting the designs from inspection?—No, I do not. I spoke once to Mr. Whittle about this. I think he said that certain of the Chambers of Commerce were very much averse to the designs being shown; but I really cannot see on what ground they can be averse to it after protection.

1384. (*Lord Macnaghten.*) It is only protection for the actual design?—That is all.

1385. Any variation that is not an obvious imitation would be open to the public?—I should certainly say it would be; but if the first party felt himself aggrieved he has always got the remedy in his own hands. He can bring an action for infringement.

1386. Do you know to what extent this section has been used? What sort of numbers of registrations are there under this Designs Act? Has this been largely availed of?—Oh, yes. I suppose there have been something like—I cannot tell you the number exactly, but some thousands of designs registered since the new Act. I do not know whether it is 70,000 or 80,000, or more than that.

1387. (*Earl of Crawford.*) In point of fact you would desire to be able to inspect the Register of Designs immediately after protection?—Perfectly so.

1388. Not to wait until the five years have elapsed, when it becomes public property?—Certainly not. I

Mr. E. de Pass.

27 April 1887.

do not see any reason why we should wait for five years. In five years nobody wants to see the design. Other designs have taken its place. A man wants to know: "Is my design an infringement of a design that is "now registered, that is, an existing registered design. "I want you to go and search for me to see that, and "if so let me have a copy of the design that I may "know what I am about."

1389. To carry it further you can now tell by examination whether the design you propose to put in has been in use at a period earlier than five years?—Do you mean under the old Act?

1390. No. This copyright gives you five years?—Yes.

1391. Previous to five years, whatever there were, you would not be able to utilise the same design?—Certainly we could not register a design that had become public property.

1392. (*Chairman.*) But why not? Your suggestion is that you should be allowed to register it without any examination. What is to prevent your registering over again a design that has been registered, and the right to which has expired?—We should make a search, if we were instructed to do that, to see if a design existed which clashed with the one we proposed.

1393. You might desire to get it registered because it might be an advantage to you, although it was a design in which there had been copyright which has expired. Your client might think he would get an advantage from registering it, and putting it out as a registered design?—Of course I should instruct him to the effect that he would have no protection for it. The public are of opinion that if they pay the money they ought to have their design registered, whether good, bad, or indifferent. They say: "We have paid "for it, and should have it for what it is worth."

1394. The next point is the objections as to including certain elements?—Yes. The point to which I refer is as regards representations of Her Majesty. Now, I had the other day a design for a photograph frame in stamped brass. A variety of things were embodied in this design, and at one corner there was a sort of pedestal on which was a representation of Her Majesty. That design took some time in going through, simply on account of the representation of Her Majesty. In order to get the design registered we were obliged to draw a cross over the Queen's face, which was then supposed to form no part of the design. There was no disclaimer inserted in the statement. It would have been better if we could have inserted a disclaimer in the statement, rather than to have mutilated the design by drawing a pen through Her Majesty's face.

1395. (*Earl of Crawford.*) Do you mean that when it comes out you are to draw it through?—No, that is the awkwardness of it; it is only on the drawings sent in. The manufacturer keeps on making the designs and stamping them with the registered mark, and yet there is an important element in that design which is not registered.

1396. (*Chairman.*) How does that prejudicially affect him? It only comes to this, anybody could copy that part of it which contains the representation of the Queen, but they could not copy any of the rest of the design?—They could not; but the public do not know that that part is not registered. Of course, an agent, who knew what went on, would be able to inform his client that he would have no protection for the representation of the Queen. I really do not see why we should have been forced to draw our pen through that portion of the design.

1397. You mean why it should not be allowed as part of the design?—As part of the design. With regard to the Patent Act you must not use the Royal Arms. There were also the Royal Arms in this design, but I left out the quarterings. They raised no objection to that part. I do not think there was anything said about that.

1398. Nor, I think, is there about the trade marks, but it has been the practice, with reference to the trade marks, to refuse representations of the Queen?—I think that is quite right. I do not think a man ought to be able to register as a trade mark a portrait of the Queen, but this element simply formed a portion of the design.

1399. (*Earl of Crawford.*) You would be content if he merely put a disclaimer?—I think it would be better if we could have said in the statement on application, which we are now forced to lodge under the present Act:—"I lay no claim to the representation of Her Majesty *per se*."

1400. Is your objection to it merely the artistic one of having to mutilate the design, because practically it comes to the same thing, does not it?—It may come to the same thing; but many persons like to frame their designs and hang them up.

1401. Do I understand you that these frames are issued with the cross across the face?—No, certainly not, that is not likely; they are issued, though, with the registered mark, "R[d]" and the number. Of course I am not competent to say what a court would decide, because that does not form part of the design, although it is the intention of the applicant that it should form part and parcel of the design.

1402. (*Chairman.*) You mean objection might be taken that it is not really the registered design?—Yes, it might be.

1403. Have you anything more to say about designs?—No, I think we have settled about the inspection of the designs. I should like to urge again that I think it very advisable that the designs should be seen after they have been registered and during the five years of protection.

1404. Do you think that would be, on the whole, desired by the class who register the designs?—I have spoken to one or two, and they say they cannot understand why they cannot see the designs that are registered. Some of them are not at all pleased at the examination that is pursued at the office.

1405. (*Earl of Crawford.*) If you were representing the owners of the designs would you feel in the same way? So far I understand your evidence to be on behalf of applicants for new designs. Do you also speak for the owners of designs at present in existence? Do you see no objection on their behalf?—I see no objection on their part that the public should go and see what they had registered, no more than I see any objection to the public seeing the patents which have been taken out in the last nine months.

1406. It would be easier to make a colourable imitation of a design than it would be of a patent, I should imagine?—I should not like to say that. These points are so very intricate.

1407. Would not it rather tend to throw litigation upon the owner of a design if it were suddenly thrown open, and anybody might go in and inspect?—I do not think so.

1408. There are people who live by making colourable imitations?—They see the designs in the shops. That does not prevent them buying one of the registered articles and altering it to their way of thinking and registering it as their own design.

1409. Do Christmas cards come under designs?—I should think they might be registered, certainly, if for a new shape of card.

1410. Not the matter which is chromo-lithographed upon it?—No, I do not think that would be registered as a design, because you have to register it in different classes. Class 1 represents metal; Class 2, jewellery; Class 3, articles composed wholly or partly of wood, bone, &c.; Class 4, glass; Class 5, paper, except paper hangings.

1411. For instance, if you brought out a heart-shaped card you could register that?—Yes; and then you could print anything you liked on it. A man might say, "I only want to protect the shape of my "card. I can put any device or inscription I like on "it, and the public will not be able to use that "shape."

1412. (*Chairman.*) Are these all the points you wish to direct attention to about designs?—There is one more. I should like to know why was the regis-

Mr. E. de Pass.

27 April 1887.

tration of sculpture abolished? Is it that we may now register a group, or a statuette, or a bust, under Class 4—"Glass, earthenware, porcelain, bricks, "tiles, or cement"? There used to be registration for sculpture under the old Act. The new Act has abolished it. I had a bust of the Queen sent to me the other day for registration. I was obliged to inform my clients that I could not register it for them. In the first place there is no registration for sculpture. In the second place, it was a representation of Her Majesty.

1413. Do you know whether there was much done under the sculpture provisions of the former Act?—I do not think there was very much done, but yet I do not see why it should have been abolished.

1414. I think sculpture has been considered a good deal in connexion with the general question of copyright, has it not?—I believe it has.

1415. The Copyright Commission, of which I was a member, dealt with the question of sculpture in connexion with the other questions of copyright; and probably any method of dealing with the registration of sculpture would be dealt with in a Copyright Bill when we see one?—Yes; but until we see one, perhaps the manufacturers would like to be able to protect their goods. Not only that, they would get the registration mark which they can put on. I believe I was right in telling my client that I could not register it for him. I knew it was no good putting him to the expense of making drawings and paying the fee, because we do not get back the fee if the design is refused, and if we want to know whose design we are infringing we have to pay a little more.

1416. (*Lord Macnaghten.*) I see the words of section 60: "not being a design for a sculpture or "other thing within the protection of the Sculpture "Copyright Act of the year 1814"?—That is abolished.

1417. When was that?—That was abolished when this new Act came into operation. I think it is quite understood that there is no registration for sculpture.

1418. (*Chairman.*) But the man may have copyright?—We used to be able to register sculpture under the Designs Act up to 1883. Not very many designs, but we cannot tell that this Act may not be required again. I can only speak from my own experience of the case in point.

1419. Is that all the evidence you desire to offer?—I think so. I do not recollect anything else.

The witness withdrew.

Mr. J. Starey.

MR. JOHN STAREY called in and examined.

1420. (*Chairman.*) I believe you are secretary to the Trade Mark Owners Mutual Protection Society?—Yes.

1421. There are certain points with reference to the working of the Trade Marks portion of the Patents, &c. Act to which you wish to call our attention?—Yes.

1422. What is the first point?—The first point is one on which possibly you have had evidence, namely, the delay in dealing with applications. I have applications now in since the 5th January for old mark owners, and I understand, on inquiry at the office, that we must not expect any applications dealt with in less than 10 weeks; that is the message we get.

1423. (*Lord Macnaghten.*) Do you mean that that is in respect of the applications you sent in at that time?—Yes. I sent several in about the beginning of January.

1424. Do you mean 10 weeks further?—No, it is taking 10 weeks to get applications through the office previous to issuing the block notices. The hardship that that occasions is that we cannot protect them abroad. In these particular applications we are being very largely pirated on the continent, and we cannot get certificates. That is where the hardship is. The office takes three months before we get our block notices. It takes another two or three months before we get into the journal, and then under the Act it has to stop another two months before we can get on the register and then get our certificates; the consequence is that really the registration is no use at all; it is so long getting through that we cannot touch the pirates abroad at all.

1425. (*Earl of Crawford.*) How do they know what they are pirating; have you published it?—No, we know from the labels coming over; we know what labels are coming over. When the Act first came in force we used to have our notices to advertise in about a week or a fortnight; now I believe the numbers have so increased that it is impossible to do it.

1426. (*Chairman.*) Does that apply only to the old marks or to the new marks as well?—Equally to new marks. There is not the importance in one way as regards applications for new marks as in the case of old marks. An old mark, as a rule, is much more valuable, and in case of piracy you want to take more immediate steps. On the other hand, in the case of new marks, a merchant gets an order over to day for certain goods and he wants a special mark for it, and if the registration is going to take the time it has done—about nine months—he cannot stop that mark being registered at all. In other words, if we are to stop for three months before we get an answer whether a mark can be accepted or not, and the Comptroller-General thinks it ought not to be taken, a merchant sends in another mark, and he has to stop for three months for that again before he gets an answer, and that may be objectionable with the great difficulty of getting marks, and we may go on for 12 months before getting a mark.

1427. Do you think it arises from the office being undermanned?—I have no means of knowing. I have always found the greatest courtesy shown to everybody, and every assistance is always given where it can be given, but I should say it is undermanned in some way. The public are allowed to inspect the unadvertised marks. I had occasion to do so the other day, and I should think in classes 47 and 48 there was a pile as high as that (*describing*), and in looking through those I found from my own knowledge that a great number of those were already on the register and had never been taken out, consequently the public have to wade through a mass of marks which are already dealt with. Now that must be either carelessness on the part of some of the clerks or it must be occasioned by want of time to do it. I have been told by the clerks that it is want of time.

1428. What is the next point?—I will suggest whether some arrangement could be made after the block notices are issued for the marks to be advertised within a certain time, say, for argument's sake, if blocks are delivered correctly this week that they might go in the week after next in the journal, and there should not be so much delay in advertising.

1429. How long does it take now?—It has been taking six weeks and two months after the blocks are lodged.

1430. (*Earl of Crawford.*) Is that owing to the desire not to make the journal too large?—There have been double journals issued, I think, for the last five or six weeks, 48 pages instead of 24 pages. The marks have been gradually accumulating. They are too many to go into the journal of the usual size.

1431. (*Chairman.*) Is there any more expense or difficulty in publishing a double journal than in publishing the same thing later on?—Of course there is more work to be done by the staff in the week, and of course the public are only paying 1*s.* for a double quantity of information which must, I suppose, become a loss to the department.

1432. They do not charge double for the double number?—No; but then they did not charge half

Mr. J. Starey. 27 April 1887.

some years ago when they only gave us six pages. The next point is as to the great difficulty which is experienced now by trade mark owners as to what, in the decisions of the Court, constitutes a fancy word. I have taken out a number of words here; they are advertised marks. It is perfectly impossible that they can be fancy words; such as "Housekeeper's Friend," "Sublime," "Famous," "Favorite," "Brilliant," "Sensible," "Sensitive," "Household Treasure."

1433. Would not that depend somewhat on the subject matter in connexion with which they were registered?—These are all registered. I have taken two of the heavy classes, 47 and 48, that is soap and perfumery. These are all that class of goods. Then there is the word "Sundried." There is the greatest difficulty in knowing what, in the Comptroller General's opinion, or the Board of Trade's opinion, constitutes a fancy word. A few days ago I had an appeal before the Comptroller General. I wished to register the word "Hard Seam" as applied to tobacco, and it was refused. Now I cannot understand why such a word as "Hard Seam," which is not descriptive, should be refused. There is no "Hard Seam" in tobacco; it is not common property, and it certainly is not geographical. Against that we have the names which I have read to you.

1434. I suppose your application for "Hard Seam" was made subsequent to the decision of the Court about the word "Electric"?—It was after that. It had been standing over for a long time.

1435. I will not say all, but probably most of the words that you have read, perhaps all, would have been refused if they had come before the Comptroller after the decision of the Court in the "Electric" case?—Some of these are in quite recent journals, long since the decision in the "Electric" case. It would be an advantage if there could be some expression of opinion from the Board of Trade as to what really did constitute a fancy word, because if "Hard Seam" is not a fancy word for tobacco I fail to see what we are to take. It is a particular tobacco for use in coal mines, because it does not flare. There are no sparks given off.

1436. What is the next point?—The next point is under section 66 of the Act, which provides for the registering of a series of trade marks. That particular clause was drawn by our counsel, and was discussed at the Committee on the last Bill by Mr. Wills, the member for Coventry, who then took this matter up. Our object in getting that clause for a series of trade marks, was that in depositing one mark which only differed in common property elements, a certificate could be got for any of those marks if required for foreign registration.

1437. A separate certificate?—A separate certificate could be got for any of those marks if required for foreign registration purposes. Now in that clause you will see that colour is very carefully avoided, and, I think, properly so; a mark may differ in certain ways, but it cannot differ as regards colour. That clause appears to me to be very explicit. As regards clause 67, it states that a mark may be registered in any colour, but it gives the applicant exclusive right to that mark in any other colour. Where we find great hardship occurring now is in this way: under the old Act of 1875 a large number of marks were put on in a particular colour, and the practice of the Registry Office for a great number of years was to give a certificate for foreign registration of that particular label in any colour that the applicant chose to send in. Of course it must be identical in other respects, but under this Act we are still powerless to get a certificate for foreign registration except in the colour which we deposited with our representations. Now that is a most serious thing, because in printing off a large number of labels the colour varies; the merchant uses it in different colours, and unless we can get a certificate in any colour, we cannot register abroad, we are blocked entirely.

1438. The certificate, I think, is only provided for by a rule?—Yes.

1439. (*Lord Macnaghten.*) Can you refer me to the rule?—It is rule 57.

1440. (*Chairman.*) This matter which you are speaking of is apparently a mere practice of the office. There is nothing about it in the rules?—No.

1441. Nor does it seem necessarily to follow from the forms?—No. I took a very active part with Mr. Wills in drawing these different rules when this Bill was in Committee, and that clause was specially brought in and drawn by our counsel with a view to the Comptroller being enabled to grant a certificate of a mark on the register, but in any colour. I have spent, I think, some weeks with the Comptroller endeavouring to get a certificate of that mark in that particular colour (*producing trade mark*), because the colours have differed. The colour which was put on in 1877 happens to be brighter than we could get at the present time. It is not quite the same colour; it is not actually the colour of the mark itself, it is the colour of the paper on which it is printed. All these marks differ in use as regards colour. It is necessary to get a certificate in certain countries, such as Holland. For registering marks in Holland it is necessary that the Comptroller's certificate here shall bear the mark in the colour in which we wish to register it there. That is really a most important matter; it is causing a great deal of trouble, and you will see that since 1876 a great many manufacturers have altered the colour of their labels. The other point is that according to the practice of the office now, it appears that marks are being put on the register which are calculated to deceive. Whether this inquiry goes to that point I do not know, but I thought it would perhaps be of value to show you this particular case. That is the mark which it is proposed to put upon the register, and those are the marks which are registered (*producing same*). This is one of a good many cases; I thought one case was sufficient to show the point. All those are old marks; they are all known as globe goods.

1442. (*Lord Macnaghten.*) Do those three marks belong to the same person?—No, Hill's and Underwood's mark is only for wines and spirits, and the others are for beer; they are all old mark owners, the applicant is endeavouring to register this, and it appears to have been passed by the office. I have two other similar cases since.

1443. (*Earl of Crawford.*) He has a lion on the top of his globe?—Yes, but I do not think that affects the case; there have been four series of globes with little crests on the top which have come through now, and that has caused those three firms a very heavy amount of expense in opposing already.

1444. (*Chairman.*) What is the next point?—That leads to the question of the Act not providing for an applicant getting back the expense of the opposition. It is a matter of frequent occurrence for us to write to an applicant, as in this case we wrote to this man, and we get, generally speaking, anything but a courteous reply to say that as the Comptroller General has passed the mark, it cannot be calculated to deceive, as his opinion is better than ours, which possibly it is. We have to put forward an opposition as provided under the Act at the cost of a sovereign, besides our own expenses, and we have no means of recovering that.

1445. You mean even if you are successful?—We can get back no costs or expenses in opposing until a summons is taken out to bring it before the High Court.

1446. (*Lord Macnaghten.*) Then you do not get your previous expenses?—No, we do not. What we feel so strongly is this. There is a class of small trade mark owners who send in these applications week after week as close as they possibly can. Immediately we put in an opposition they withdraw it, putting us in the meantime to the expense of 1*l.* opposition fees, and 10*s.* on the bond, and they quietly walk away, and all they have paid is 5*s.*, generally speaking putting us to about 5*l.* expense in each case. I think some provision ought to be made that these should be

sent in at the risk of the applicant, and in case of opposition they ought to pay the proper expenses. Then I would refer to section 79, subsection 5, by which all marks registered in 1876 would require renewal in 1890. It has been pointed out to me by a number of trade mark owners, that at that particular date there will be an immense number of marks which will not be renewed on account of death and bankruptcy; but the section of the Act will prohibit any of these devices being made use of for five years after the final notices have been sent, thereby not throwing open to the public a number of devices which at the present time are so very difficult to get. Whether any alteration could be made in that clause I do not know.

1447. (*Chairman.*) You mean so that if people do not want to re-register for another five years they should become public property?—They would re-register in 1890 for another 14 years on paying a renewal fee.

1448. Your suggestion is that if people owing to death, or bankruptcy, or otherwise, do not choose to re-register them the marks should become public property?—Yes, I could give a list of 200 valuable marks which I know myself, where the people are dead or bankrupt, and where they would, in the regular course, say 12 months after 1890, be used by other applicants, but they cannot be because the Act makes a margin of five years.

1449. (*Earl of Crawford.*) Is a trade mark an asset in bankruptcy?—Yes, and it is sold with the good will, perhaps there is not any value attached to them, but they are frequently sold as an asset.

1450. You could not make a general rule that they should become public property. There might be cases where in a bankruptcy it might become valuable in other hands, and pass straight to them?—Then they could pay the renewal fees.

1451. (*Chairman.*) You would give 12 months during which they should pay the renewal fee, and if that is not done then it should become public property?—I think so. The Act fully provides for registered letters to owners. If the owner is alive and in England it is impossible but that he should know that the renewal fee is due. I think 12 months margin is enough. That would throw open perhaps some thousands of marks for other applicants.

1452. (*Lord Macnaghten.*) What would be the effect of that? Would there be a general scramble for those marks?—No, I do not think so; another applicant would be allowed to take it. As it is now there is a great difficulty in getting a device for a particular mark. I may tell you that for one Birmingham firm I sent in 45 before I could get a mark for iron goods. I frequently in a morning send back 20, knowing in my own mind that they are blocked. There is great difficulty about it. Then there is another point, which no doubt has been an oversight in the Act. Applicants residing in Sheffield or in the district of Hallamshire have, under the practice of the office, to pay double fees, or double the amount of fees in certain cases to those which a Birmingham man has to pay. That arises in this way: In the case of a man residing in Sheffield or in the district of Hallamshire all applications for cutlery, edged tools, or goods with a cutting edge made of steel or steel and iron do not have to be sent in to the Sheffield branch office under the control of the Cutlers' Company, but if the same applicant wishes to put that same mark on iron, which comes within the same class 5, he has to send one application up to London and another to Sheffield, thereby paying double fees, whereas a Birmingham man sends them both into London in the regular course, and only pays one fee. Now I think that is very unjust to Sheffield.

1453. (*Chairman.*) A Birmingham man does not send edged tools to Sheffield?—No, it is only in the district of Hallamshire. That was evidently an oversight in drawing the clause. Take, for argument's sake, a man in Birmingham who makes tools with a cutting edge and tools not with a cutting edge; if those tools, such as pickaxes, are made exclusively of iron, that manufacturer has to send his application to London. If the tools are made exclusively of steel he sends it to Sheffield, and has to pay twice. The same with spades; if it is a steel spade it comes into Sheffield, if iron it comes to the London office. The next point is as to section 96; there is no certificate granted except for special purposes. A certificate is granted by the Comptroller General to be used in respect of foreign registration, which, I think, is working very well; but, on the other hand, there is no general certificate which can be produced in court to the judge to show that a mark is registered; but each time we have to get a fresh certificate, and in the case of large houses, such as Bass', that I act for, we are constantly being obliged to get fresh certificates. I would suggest whether a regular certificate cannot be given the same as in foreign countries, which would show the applicants title to the mark.

1454. That would be a matter to be dealt with by the Rules?—I take it, it would.

1455. It is not a matter that would need any alteration in the legislation?—I think not.

1456. (*Lord Macnaghten.*) Do you know why special purposes are required to be stated?—I cannot understand it at all. I can understand it when it is required to enable a British subject to register abroad. It then says: "In the matter of an application of Messrs. Bass to register their trade mark in Holland," but then that certificate is kept by the foreign government. Therefore, there is no objection to that as far as certificates for foreign purposes are concerned; but when we come to the case of a small action before a police court or anything of that sort, we have to keep getting fresh certificates every time, because the title is filled in, whereas in Germany or Russia, and all other foreign countries, we have simply to hand our certificate in.

1457. (*Earl of Crawford.*) Of course you have to pay a fee every time for getting the certificate?—Yes; and the difficulty arises, perhaps, quite as much in having to supply them with the identical marks as on the ground of expense. The marks must be identical with those on the register, and sometimes there is a great deal of trouble in getting them.

1458. (*Chairman.*) You may have exhausted your surplus copies?—Yes, in some cases we have done so. Then there is a point which I think has been overlooked for some long times, and that is that, as regards the Cotton Classes 23, 24, and 25, representations of the marks are not put in the Trade Marks Journal. That is a very great hardship to the different spinners who reside in Glasgow and Paisley, and those districts where a very large quantity of sewing cotton is made. In 1875, I believe, from what the Comptroller told me at the time, that when there was so much pressure and trouble with the cotton marks, to expedite matters, it was arranged that they should not be advertised; but I submit now that there is no more trouble, and not so much trouble would be given to the applicant, and not so much cost in advertising 23, 24, and 25, as in the case of other classes.

1459. Classes 23, 24, and 25 are exhibited at the office in Manchester?—Yes, and they are exhibited at the office in London.

1460. We have been told that all the Glasgow houses have their agents in Manchester?—A great number of them have; but suppose we take the Derbyshire district, and people such as W. and J. Strutt of Belper, and Walter Evans of Derby, and several in that district and in Chesterfield. It is making the trade mark owners dependent on their agents instead of being able to take the journal themselves and watch their interests. I fail to see why these particular classes should not advertise. I have looked very carefully into this, and in the case of classes 23, 24, and 25 a very large number have lately been sent in by Messrs. Rylands, the well-known firm in Manchester, and 200 of those marks are of the most simple nature. The cost of the blocks would

Mr. J. Starey.

27 April 1887.

not be above half-a-crown a piece, whereas if we took such blocks as this (*producing a trade mark*) the cost of preparing them is something tremendous. I think it is rather unfair that we should be called upon to supply blocks in these cases and not in the others.

1461. What is the next matter?—In connexion with the delay I wish to point out to you that under the Treaty Convention with foreign countries a British subject has a prior claim to registration, say in Germany, for four months after he is registered in England in the case of a new mark; but inasmuch as the date of registration in England is the date of application the advantages to be derived from the Treaty Convention with foreign countries is nothing. We cannot possibly get on in the four months, in fact the office would have to be very quick indeed to get on in four months, because two months out of the four must necessarily elapse under the Act.

1462. Would you suggest then that if the Convention remains as it is the registration should not date from the application?—No, I think facilities should be given to the public to put it through within the stipulated time. I think it might be got through in the stipulated time. Of course if the public fail to supply their blocks that is their fault. Then the present Act and Rules do not give any provision for the Channel Islands, Guernsey, and Jersey especially. A Bill was brought in, drafted by us, and brought into the House of Lords by Lord Belper, some two years since. It was withdrawn, the Government of Jersey undertaking to bring in a Bill next session, which they have not done; but there is no protection for trade marks at all in Jersey at the present moment, and piracy is going on to a frightful extent. This Act does extend to the Isle of Man, but not to Jersey and Guernsey. The Isle of Man gave their consent at that time, they made no objection to it. Then with reference to Rule 20, as to an appeal to the Board of Trade, some little hardship seems to be felt, because unless the Board of Trade sanction it we cannot go beyond the decision of the Board of Trade as regards trade mark matters.

1463. You mean you cannot go to the courts?—No, unless the Board of Trade refers it.

1464. Should you be in favour, because that suggestion has been made, of doing away with the appeal to the Board of Trade and sending the case always to the courts?—I understand from the Comptroller that in any difficult point he does really consult the Board of Trade, so that his decision is in many cases really that of the Board of Trade.

1465. So that that in your opinion would point to the doing away of the appeal to the Board of Trade?—I think so. In that case any costs of the Registrar's refusal have to be borne by the applicants. There is no means of making the Board of Trade pay the costs of the successful applicant. That seems to be hard. The only other point that I think is worth mentioning is the question of the action of the Cutlers' Company. The solicitors to the Cutlers' Company and the Cutlers' Company, and the Registry Office, are really worked together in Sheffield. They are really the same. The Cutlers' Company are causing the Sheffield office, which is really the same thing, to put in opposition on behalf of their own clients, and when we appeal to the Comptroller, or the Board of Trade, we cannot get any costs against the Sheffield Registry or the Cutlers' Company.

1466. Do you mean if you successfully oppose them?—Yes; the Cutlers' Company really being identical with the Registry Office, as far as the work is concerned, they put in their own opposition, and when that comes before the Comptroller or the Board of Trade we have no means of getting the costs back from the Cutlers' Company or the Sheffield Registry.

1467. Is the opposition put in in the name of the Cutlers' Company or is it merely nominally the opposition of the office?—It is put in by the Cutlers' Company, by the law clerk of the Cutlers' Company.

1468. Is he solicitor to the office in Sheffield?—He is solicitor to the Cutlers' Company, so that, of course, it is the interest of the Cutlers' Company to look after their clients, and the moment they see a mark which they think is in the slightest degree objectionable, they cause an opposition to be put in, which costs them nothing; there is no fee.

1469. The office in Sheffield is established and kept by the Cutlers' Company?—Yes; and worked at the office of the solicitor of the Cutlers' Company. Mr. Hughes is, I think, registrar, and he is the junior partner of the firm.

1470. Are those all the points you wish to bring before us?—Those are all the points which I think it is worth while troubling you with.

1471. (*Lord Macnaghten.*) Have you thought of any definition of what a fancy word ought to be taken to mean?—I think a fancy word was intended under the Act to be a word which was not geographical and not descriptive, and which in no way could be stated to describe the goods, what I should call a totally arbitrary word, and not an adjective.

1472. (*Chairman.*) Would you be in favour of allowing the registration of short phrases?—No. I am constantly travelling over England, and my experience is that it has been no boon at all to trade mark owners taking words at all. I think it has been a great mistake.

1473. Words of any kind?—I think word marks have not been at all beneficial to trade mark owners.

1474. Are you aware that word marks in proportion to design marks have been very largely increasing?—Yes, they are for this reason: There are certain houses now in the soap trade that have registered as many as 150 word marks, and they are simply doing that to block anybody else taking them; they are not using them. It is perfectly impossible that they can use more than half a dozen. I am speaking now from my own practical knowledge.

1475. (*Lord Macnaghten.*) Word marks are more popular, more useful, and more sought after in certain trades than in others, are they not?—They have been lately, but the general feeling amongst the higher class of trade mark owners is this: If, for argument's sake, you have a Globe you can always call it "The Globe Brand." I think it is very useful to have such a device that you can give a name to it, such as the "Bull Dog Brand," or "Globe Brand," or "Golden Cross Brand."

1476. (*Chairman.*) What would you call that (*handing a trade mark to the witness*) if you did not give a name to it?—It would be difficult to describe that.

1477. It is simply a Highlander dancing. The whole point is in the name?—Yes. There is one other point as to the reduction of the fees; the general feeling of the higher class of trade mark owners is that the Government have made the fees too low. I daresay you have noticed there is a mass of marks going into the Registry Office now, and the class and character of those marks is very different to what they used to be. There would be very little value attached to them. Some of them are really not worth the paper they are written on. I think the fees are too low. I always felt very strongly on that point. I think the old fee of 2*l.* was a very fair charge to be paid by trade mark owners, taking the average, but as it is now the application fee is only 5*s.*, and I should think that must certainly involve the Government in doing five to six hours' work for 5*s.* Then the applicants do not complete the registrations at all. In several cases, where the marks are only wanted for a short time, such as the Jubilee marks, it is not worth a man's while to pay the registration fee, because, before the 12 months is up in which he has to pay it, the thing will be at an end, and the mark is no good. It is only a season mark. There is an immense number of marks which never pay the 1*l.*, consequently the office must be working at a loss.

Mr. L. Starey.
27 April 1887.

1478. You would suggest that even if the total fee remained the same a larger proportion should be paid on the application?—Yes, and I think the fees are too low. That would be the general feeling. It brings in a lower class of mark, and every little man now is getting a trade mark.

The witness withdrew.

Adjourned to Saturday next at 11 o'clock.

Board of Trade, Whitehall.

Saturday, April 30th, 1887.

PRESENT:

LORD HERSCHELL. | LORD MACNAGHTEN.
THE EARL OF CRAWFORD. | JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. I. Hoyle, M.P.
30 April 1887.

Mr. ISAAC HOYLE, M.P., called in and examined.

1479. (*Chairman.*) You are member for one of the divisions of Lancashire?—Yes.

1480. And a governing director of the house of Joshua Hoyle and Sons, Limited?—Yes.

1481. I believe the firm has existed in that form for 13 years and upwards?—Yes.

1482. It was turned into a limited company with a view of giving the workpeople a chance of having an interest in the concern?—It was.

1483. I believe your firm employs upwards of 2,000 workpeople?—Yes, we do.

1484. Have you taken an active part in the conduct of the business?—Yes, for more than 40 years.

1485. Does your experience of trade marks extend over that time?—No, my experience of trade marks only extends over about 23 years.

1486. Your firm have used trade marks?—For about that length of time.

1487. Was that in connexion with the home trade, or the export trade?—In the first instance, with the home trade; and it arose in this way. We brought out an article that came to be in great demand, and was well known over the United Kingdom shortly afterwards. Our customers informed us that they were being undersold, that goods of the same weight, width, length, reed, pick, and manner of getting up, were sold at lower prices; and acting on advice, we adopted a trade mark, telling our customers that we did not wish to use the trade mark, excepting for goods made the original length and width, and with the heading, and all other particulars, so that they, and all their customers would know that that heading, without the trade mark would be an imitation.

1488. What do you mean exactly by a "heading"?—A "heading" originally consisted of coloured threads woven in at each end of the piece to show the purchaser that it was a whole piece, and had not been what we call "fented." But latterly headings have become very different from what they were originally. Perhaps I can show your Lordship better by submitting *that* as a kind of thing now used as headings (*producing specimen*).

1489. Is this found at each end of the piece?—No, that is what we call at the heading end, that is the finish of the piece.

1490. It is only found at one end?—That is so; and inside there will be a smaller heading just to show that it is a whole piece as was originally intended. Now these have come to be distinctive marks.

1491. The differences being, I suppose, in the colours and in the number and *lines*?—And the arrangement.

1492. Did you afterwards adopt trade marks in connexion with export manufacture?—Yes, but in another form.

1493. I understand besides the heading which you adopted for the purpose you have mentioned there was also a trade mark?—Yes.

1494. You did not rely merely on the heading?—That was so.

1495. Now about trade marks for export purposes?—Our experience was a little different there. About the same time we brought out a superior article which was exported to Egypt, and the merchant who exported it was so satisfied with the quality that he decided to have very dull colours put into the heading and in such violent contrast that nobody would be likely to imitate them. A considerable trade sprang up, and again there were imitations. It was not very long before in Manchester the heading became common on inferior goods. Subsequently we brought out a better class still, and the Egyptian merchant in Manchester suggested that we should put a distinctive heading on, and alongside the heading stamp these words, "This heading, colours, and design "are used by the manufacturer as his trade mark. "Imitators beware." That we stamped on every piece.

1496. That was prior to 1875?—Yes. That was effectual. There were no imitations of that heading or of that mark. I should have said also that with respect to the home trade, the trade mark we adopted was effectual in stopping the imitations, because people got to know that the heading, the length, and all particulars the same but without the stamp was an imitation, and therefore it sold for less than its value instead of more than its value.

1497. Have you continued the practice of using these headings?—Yes.

1498. The headings are not registered, are they, under the Trade Marks Act?—No, they cannot be. It seems as if from one section the intention was to register them, but by a subsequent section it is neutralized. The subsequent section, I think it is section 67, says that colours shall not be taken into account in registration. I may say with regard to headings that they become very costly to manufacturers, because for many markets each merchant wants his own particular heading. We keep a register ourselves of the number of headings, and the houses for whom they are made. We have at present 2,412 headings on our register. We keep them, or the majority of them, private, so that each merchant may rely on his heading being kept strictly to his house and not used upon any other goods.

1499. It would be hardly possible to register headings, would it, with different houses using so very many?—Do you mean register them by law?

1500. Yes?—I think it would be possible, because there are so many kinds of material that can be

Mr. I. Hoyle, M.P.
30 April 1887.

used in headings, cotton of various colours, also mixed in the thread, worsted, flax, silk, and certain kinds of grasses might be used. There is hardly any end to the variety that might be adopted.

1501. (*Earl of Crawford.*) Would you not have to dispense with colour?—That would depend on the Act of Parliament. I think the Act of Parliament would want amending.

1502. (*Chairman.*) I am speaking now of what you would suggest. You would suggest having colours and combinations of colours?—Certainly.

1503. (*Mr. Hutton.*) There is no pattern in that heading, it is all lines?—Yes.

1504. The moment you strike out colour it is a mass?—Yes, but the colour never is struck out.

1505. I mean in the Act, you are not able to register colour?—That I think is a defect in the Act. Our customers esteem it of such importance that we cannot get out of it, we are compelled to do it.

1506. (*Chairman.*) Is there much difficulty now arising from the use of your headings though they are not registered?—Yes. Another manufacturer making an article that is not so much appreciated may adopt the same style of heading exactly, the same number of stripes, the same number of threads, and the same colours, and so deceive any but an expert.

1507. If that were done for the purpose of representing that the goods were made by you for example, that might be an offence under the Merchandise Marks Act?—But you are going to abolish that, you are going to repeal that Act.

1508. Who is going to repeal it?—There are three Bills before Parliament now.

1509. But as I understand (I do not know much about it), they are going to make it stricter and more easily enforceable, not to repeal it, with the view of rendering penal any misrepresentation, such as, for instance, that goods were manufactured by a particular person?—I do not think that is done as a matter of fact, that they are made by a particular man, but they are sold of the same width, length, weight, reed, pick, and with the heading on that a superior cloth has on, so that an unwary purchaser may say, "Oh, well all the distinctive marks are the same, and this is offered at a lower price;" and so the business is taken away from the man who has been at the pains to get up the superior article.

1510. What would strike one would be that if you had these very large numbers required by each firm the difficulty of seeing that two firms are not using approximately the same would be very great?—That would depend on the registration. We do not find any difficulty ourselves in practice; and we are assured by such houses as Schuster Fulda and Co., one of the partners of which firm has been here before you, that the guarantee they have in using our headings is as good as registration by law or was until the imitations became so common. Now the cost of woven headings is very considerable. I have over and over again offered that if merchants would dispense with headings altogether, and take goods simply without headings, I would allow the cost of the heading on the purchase. But in no case have I been able to succeed. The headings are insisted upon.

1511. Is the cost of the heading considerable in relation to the cost of the article?—In our firm it has amounted in one year to 1,078*l.*, and for the average of the last five years it cost us 896*l.* 15*s.* 8*d.* a year. And for any purpose but that of a trade mark the money might as well be thrown into the sea.

1512. (*Earl of Crawford.*) It is all cut to waste eventually, is it not?—Quite so; but independently of that the material you will perceive is worsted, and it is short worsted, short stapled, so as to get a good colour and a brightness on to the surface. As soon as that is washed it will all come out, it will disappear.

1513. (*Mr. Hutton.*) Loose colour?—Not only that, but the material itself goes.

1514. (*Chairman.*) You mean the stuff that the heading is made of?—Yes, the heading itself disappears; it comes out and leaves a blank space.

1515. (*Mr. Hutton.*) What do you estimate the cost per piece. You say you offered to sell those goods at a reduced price if they had no heading?—It varies very much according to the breadth of the heading. There would have to be a calculation of the cost in each case. That I should think would cost something like $\frac{3}{4}d.$ to 1*d.* per 24 yards.

1516. I suppose you have to pay extra wages as well?—As a matter of fact, we do pay high wages so that it is reckoned in. We do not pay actually for the putting of the heading in but we pay a high price per piece, higher than our neighbours, so it is reckoned in that way.

1517. But not higher than if it were without the heading?—Yes. You cannot attract skilled labour without paying highly for it. The character of that cloth requires skilled labour.

1518. The heading is put in by hand, I suppose?—Every time the colour is changed the loom has to be stopped and the shuttle taken out and the coloured thread whipped off the shuttle quickly, another colour put in and the threads counted because they must be equal, so that there is a great deal of labour, but the cost which I have mentioned, 896*l.*, is for material alone, without reckoning the cost of labour.

1519. Could not that be registered under the Designs Act instead of under trade marks?—No; I think it ought to be registered under a trade mark, because it is a trade mark and has no other use. It is not of the slightest use to anybody in the world excepting for trading purposes. It is really so much waste. The whole of that length has to be torn off before it can be made into a garment, it is not only this cost of 896*l.* a year, but it is the cost of the cotton, the warp, and the weft, and the labour that goes along with it.

1520. (*Chairman.*) What you have given us is merely the materials used in putting in the heading?—Yes; what we pay in money out of the concern to traders for the supply of that material is 896*l.* a year.

1521. (*Mr. Hutton.*) Is it not the case that all the India shirtings which go to India, what they call gold thread heading, are all the same whoever makes them or very little different?—I think so. But the advantage of a heading is this, for trade purposes, that where a man has improved the quality of his productions or where a merchant buys a special and extra quality he wants a distinctive heading, so that everybody may know it is a distinctive and superior cloth. There is this advantage about headings that they cannot be tampered with. They are part of the thing itself. The ordinary stamped mark is something put on. Headings cannot be tampered with without the purchaser knowing. To give you an illustration. That heading (*producing a specimen*) if you count from the centre has four stripes, and it is marked with a stamp repeated four times, so that everybody buying it will know that the four marks and the four stripes of heading from the centre mean a certain quality. Anybody who can count four would know that; he does not need to know the English language. That is a slightly better quality (*producing same*) and has five stripes from the centre.

1522. (*Earl of Crawford.*) Ignorantly speaking, I should say that there were nine stripes?—I am reckoning from the centre from the yellow.

1523. How is the native to know that?—He would get familiar with the heading coming month after month and year after year. It is as easy to count from the centre and corresponds with the trade mark put on. There are five on each side, the yellow.

1524. (*Chairman.*) You add to the number according to the quality?—That first quality with four on each side, the yellow with the trade mark repeated four times was, we are informed, sold with an additional mark put on. Any clever person could do it, but the heading checked the marking. The heading could not be increased.

1525. (*Mr. Hutton.*) You mean stamped?—Yes,

an additional stamp was put on to cheat the buyer, but the heading, if he counted it, would save him from being imposed upon.

1526. (*Lord Macnaghten.*) Are all the headings duplicated in this way; if you count from the centre are they all the same?—No, that is a different thing altogether. This article is made for Persia, and it is just the distinctive mark of one firm. One house shipping to Persia requires us to put that on, much to our disgust; it is a very costly thing, but in order to keep our workpeople employed we must do what customers want; and so that was put on. These are for another market altogether, and they are a series of qualities. There is Number 6 (*producing*).

1527. (*Chairman.*) Would not you very soon exhaust the combination of things of that sort. It seems to me that if you have several thousand of them, and other makers have several thousands, you would come to the end of your distinctive heading very soon?—I think there is hardly any end to the ingenious way in which these things could be manipulated if they were protected by law.

1528. Could you make stripes in an opposite direction with equal facility?—Not.

1529. You are limited, therefore, rather to stripes across?—There are other modes, but they are very costly; they require intricate machinery, and without absolute protection it would not pay anybody for doing it.

1530. (*Mr. Hutton.*) You may register a stamped heading if it has a peculiar design in it?—Yes, that is true, but I am speaking now entirely of woven headings done by the manufacturer, and I think it is of national importance that the manufacturer should be encouraged to produce a better quality than is produced anywhere else in the world.

1531. How would you define registration of a heading like that; for instance, here there are about 20 stripes altogether without counting the number; supposing a man, instead of 12 picks of yellow should reduce it to 10?—I should say that was a colourable imitation calculated to deceive.

1532. Or suppose he put it in white instead of yellow?—Any approach to it, any attempt to deceive a buyer, would be, I think, fraud. The registrar, of course, would stop anything that was not distinctive. I do not think any headings should be registered that are not clearly distinctive.

1533. (*Lord Macnaghten.*) Are the very large number you mentioned as being registered by you all distinctive to you?—Yes, and to everybody else who deals in the article. There is a range of qualities there, and they are put in in that form so that nobody can be deceived as to what he is buying.

1534. (*Mr. Hutton.*) In certain marks is it not the case that the merchants or the dealers will have one special heading whatever may be the quality or wherever may be shipper?—I have no experience of that kind. During the 40 years that I have been actively engaged in business I have always found merchants wanted a distinctive heading, or else an imitation of another that was distinctive and well known.

1535. Take some of the Indian and East African markets where they order goods to have three red bars as they call it, that means three red stripes, as a heading, which was a standard cloth?—I have not much experience of Africa, but with the advance of civilisation, and the closer linking of countries together, I do find that what I have described is required more and more distinctiveness. Within my experience T cloths exported to China had all five red headings on. I am referring to a time before the making of the Suez Canal, and before the daily use of telegrams, when no goods could be sold with any other heading. I am speaking of T cloths only. Now the headings are as varied as can be.

1536. (*Chairman.*) Representing different manufacturers and different qualities?—Yes.

1537. (*Mr. Hutton.*) How can you begin registration. A man offers to register a one line heading, or a two line heading, or a three line heading?—I think if the principle were settled the mode of application would not be difficult. The principle should be that where a man produces something better than has been produced before, and puts on a distinctive heading, that should entitle him to registration, and that the registrar should say whether it is distinctive or not.

1538. (*Chairman.*) You mean that you would only allow it in connexion with some different quality of manufacture?—Oh, no. I would allow it to the man. The quality he and his customers must determine. I would allow it to the individual whether he were a merchant or a manufacturer, because there might be merchants' headings and manufacturers' headings.

1539. Do you think the quality of manufacture has improved in the foreign trade?—Yes, there is no mistake about it, it is not the same thing that it was when I commenced my business life.

1540. In what respect do you mean?—There is more skill in the manufacture, machinery is more perfect, the workpeople themselves are more skilled, they are better educated and they are in better health, better clad, better surroundings of all kinds.

1541. (*Mr. Hutton.*) And better wages?—Yes.

1542. (*Chairman.*) Do you think that has improved the quality of manufacture?—I have not a doubt of it, not the slightest; the Education Act of 1870 is beginning to tell.

1543. Do you find they really show any better work?—Yes, I think the standard of intelligence being higher produces good results, and it is being raised every year by the Science and Art classes, and by the distribution of prizes to successful students, and by-and-bye, I hope, technical schools will develop great skill in all textile industries.

1544. The tendency has been of late in the direction of the Lancashire trade being turned to the better qualities rather than the lower qualities, has it not?—I think so, on the whole, although there are a great many cheap goods made yet, and made as, I think, to the disadvantage of the maker, and of the merchant, and of the ultimate consumer.

1545. (*Mr. Hutton.*) Is it not the tendency at the present time to try and cut out one's neighbour by producing an article a count finer in the yarn or the sixteenth of a pick less?—If I may speak plainly, I think that applies more to the merchant than to the manufacturer.

1546. I am alluding more especially to the demand from abroad?—A manufacturer who understands his business will try to make a better and better article. I think that is always so, and if one looks round Lancashire, it is quite clear that those who have improved their makes, and improved their qualities, are the men who have withstood all the difficulties that they have had to pass through, whereas the men who always cut a little under, have come to grief.

1547. Is there no process by which any design could be introduced without going to great expense in the heading?—I make a clear distinction between a design and a heading.

1548. I mean a design introduced into the weaving of the heading?—I do not think any heading is entitled to protection unless it is distinctive, and if a manufacturer cannot make a distinctive heading, then he must go without registration.

1549. (*Chairman.*) Do you think the legal recognition of distinctive headings would tend to promote a higher class of manufacture by preventing the manufacturer's work being imitated and undersold by a lower class of manufacturer?—I think it would be an inducement to a manufacturer to do the very best he could knowing that he would reap the fruit of his own skill, and nobody could take it away from him, whilst it would be an immense advantage to the consumer not to have inferior goods sold to him as goods of a better class.

1550. Your object in the heading would be to indicate whose manufacture it was?—That might be so, or it might not, because a manufacturer has to consult the interests of the merchant, and it might happen that a manufacturer having a trade mark might

Mr. I. Hoyle, M.P.

30 April 1887.

agree to suppress it for the benefit of the merchant and not use it at all, but keep it as a power in reserve against fraud.

1551. Take this case, your Persian trade illustration, what would there be to prevent the merchant, who for the Persian trade desires this heading going to some other manufacturer and ordering the same heading for an inferior class of goods?—That is always possible, I can give you an illustration within my own knowledge. A manufacturer who having invested a very large sum in a new concern and filled his place with the most modern machinery best adapted to his purpose, produced an article which was too good, and nobody would buy it. He had got a big concern with a large number of workpeople gathered round him, and yet the market would not take off his goods. They were too good, he was told, the market they were originally made for was too poor to pay; but a merchant said, I will take these goods and ship them at your risk, you bearing the loss, and that was done. Eventually a trade was established; and the manufacturer sent in his heading for registration. After the trade had been made, and after the demand had really become sufficient to warrant the merchant in buying on his own account, as he did, in conversation one day it turned out that the merchant too had deposited the heading, and the manufacturer said, Well, but that is hardly the thing, seeing that I have incurred all the loss, and now that the business is going to pay, you take the heading. "Well, but there "is another thing to consider," the merchant said, "it may happen your price will be unreasonable some "day, and I want to be able to put this heading on "to another manufacturer's cloth." Now that tends to depreciate quality, and it seems to me the law should be so carefully framed as to meet contingencies of that kind.

1552. Supposing, for example, the heading is suggested, as I understand was the case here by the merchant, you could not say that only the first manufacturer to whom he went should register that heading as his?—It might by arrangement be the merchant's registration; I do not see any objection to that at all.

1553. But then if it were the merchant's registration, it would not necessarily speak afterwards either of the quality or of the manufacturer?—That is the merchant's risk. If he lowers the quality of his own mark he must take the consequences. Competition, I think, would meet the case.

1554. (*Lord Macnaghten.*) A trade is created by the merchant and manufacturer jointly in that case?—I suppose all trade is joint. There is the producer and the distributor, and they are each necessary to the other, so that in one sense all trade is joint.

1555. It would not be fair on the part of the merchant to apply this mark to goods of another manufacturer, nor would it be quite fair on the part of the manufacturer to take his custom away from the merchant who had helped him to establish the trade?—I think perhaps it is possible to attach too much importance to a mark, a mark is not the thing itself, it is only a mark after all. It is the article itself which ultimately commands the confidence of the public. What I mean is this, that if we English people can produce better and cheaper goods than any other nation in the world, we shall retain our trade but not because of our marks. A man in China does not care a fig about a mark. What he does care about is the article which the marks leads him to believe he is getting for his money. Something that will wear.

1556. (*Chairman.*) Does not that rather tend against what you have been saying as to the great importance of the marks?—I think not. If a man has a distinctive mark, nobody should rob him of it, and if he chooses to depreciate the mark himself, then he does it at his own risk, but no competition should take it away from him.

1557. I suppose what you mean is that ultimately people would not be deceived by the marks if the quality was bad?—They would not.

1558. But that it takes some little time before the fact filters through?—Precisely.

1559. And during that time you would get the benefit if you have the mark, and nobody else interferes with it?—Yes; a trade mark seems to me altogether different from a patent or from a design. A patent is protection for the thing itself, and you cannot depart from the specification, but a trade mark, in consequence of the changes that are taking place in trade, is either of permanent or temporary value, according to the way in which it is used. If the owner of a trade mark continually improves the quality of the article on which he puts that mark, it will be known everywhere to mean goodness of quality, but if he relies on his mark and does not keep pace with improvements in the supply of the article, the mark itself will become second or third rate.

1560. Have you considered the facts and the arguments that have been put forward by the Trade Marks Committee of the Manchester Chamber of Commerce?—Yes as a director of the chamber and a member of that committee of course I am aware of what has taken place.

1561. Do you concur in the conclusion which that committee put forward?—In some respects I do. I think that there should be absolute and complete protection for the owners of trade marks, and that similar marks should not be admitted to registration. I think further that where a mark has inadvertently got on to the register that is so nearly like a former registered mark as to deceive, it should be easy to get that mark removed and without cost to the innocent owner of the first mark.

1562. In what respects do you differ from their conclusions?—I differ from them in their desire to have control of the administration of the Trade Marks Act in Manchester. I think that would be most unfortunate, because having pecuniary interests in the matters to be decided, it is not in human nature to be impartial.

1563. Your objection would be to another control, but supposing that it were dealt with by the office, do you see any objection to its being more largely dealt with by the office in Manchester than it is at present, as distinct from the office in London?—I think the less interested influence you can bring to bear on the registrar the better; it seems to me it would be almost impossible to prevent some local and sectional influence. I think the registrar should not be subject to that.

1564. Would he not be much more likely to be able to judge what would meet the general wishes of the community than the office are in London, that was not in any way in touch with them?—I do not think so, because you have to regard the interests of producers, who are a larger class than the merchants; you have to regard the interests of consumers, who are a larger class still, and I do not think you can do justice to all these classes without there being a central authority that can decide without influence from any of them, and an officer under the control of Government, so that his conduct would be subject to public gaze.

1565. Would you see any objection to a committee on which producers as well as merchants were fairly represented, to which reference might be made, not for the decision of questions, but for an expression of opinion which might in matters of doubt assist the office?—It seems to me that a committee to be impartial would have to be constituted on the basis of all the parties interested, and therefore consumers would have to be more largely represented than anybody else.

1566. But why the consumers?—Because they are the people whose money is taken for the articles.

1567. Still they are not directly interested in the trade mark, are they?—Certainly; they are more interested than anybody else. It seems to me that the law should prevent them being cheated by buying an article under a mark which is fraudulent.

1568. There would be sufficient protection for that

in the interests of one merchant or one manufacturer as against another?—Then you would want a larger preponderance of manufacturers, and that would hardly suit the Manchester Committee, I think.

1569. Suppose you had a committee in which manufacturers and merchants were both fully represented?—You would have to represent them according to their numbers. Then there is another thing; supposing that committee were to place obstacles in the way of registration, a rich applicant of course has an appeal, and to him it does not matter very much about the cost; but a poor manufacturer, who may be dependent on the members of this very committee for his living, could hardly go before them, and if they decided against him he would not get the benefit of his own skill.

1570. I am not suggesting that the committee should have any power to decide at all, only that the committee should be a committee of advice and assistance, whose views should be in no way binding on the office?—But I think advice could not be impartial. It is impossible in the nature of the case for it to be impartial.

1571. Take the action of the committee, which divided the marks into first and second classes; on the whole, though there were some complaints about it, the action of that committee gave satisfaction, did not it?—It gave great dissatisfaction in some cases. In the majority of cases they must be right. They would be dolts if they did not decide rightly in the majority of cases. I think that committee, from its very composition, was unable to do strict justice.

1572. Do you agree with the view put forward by the witnesses we have had, as representing the Chamber of Commerce, that there has been some uncertainty as to what should and should not be registered as trade marks, and also a tendency to admit as new marks marks that were calculated to deceive?—I think there may be, but the pressure brought to bear on the office from the Manchester Committee I think has hardly enabled the office to do all that it might have done; there has been an uncertainty about the administration of the Act in consequence. The pressure has come from one class, the merchant class only. I think that the producers who make the article ought to be considered. They are the most important, in fact, because a merchant cannot improve the article after he gets it; it is made already. So that the trade depends really and truly on the producers putting more and more skill into their productions.

1573. (*Mr. Hutton.*) How many producers are there that register trade marks?—I do not know, but registration is comparatively a new thing, and producers have hardly yet realised the advantages which this Act may be to them.

1574. It is quite open to producers to register trade marks if they wish it, I suppose?—It is not quite so open as I think it should be. You will remember a celebrated case referred to in the report of the committee.

1575. I do not mean to approach the trade mark of any other house, but to prepare and design their own trade marks. If a producer wishes to consign his goods abroad he can register his own trade mark?—I think he should be entitled to mark his own goods when they leave his works.

1576. He is entitled still?—You will remember a case referred to in the correspondence with the Board of Trade, I daresay, where the committee complains that a mark had been registered with the words, "This heading, trade marks, colour, and design, are "used by the manufacturer as his trade mark," and the committee objects to the registration of that.

1577. That is heading?—That was adopted to prevent fraud. It was like a notice-board put up on an estate, "Trespassers will be prosecuted." This committee objects to any such intimation to would-be purchasers. I think that shows that no local committee can fairly do what is right between the different parties interested.

1578. But how would it be if you have a lawsuit and you have to appeal to a jury of the local people?—I think that ought to be facilitated as much as possible.

1579. You could get an impartial jury to decide in a lawsuit?—If a lawsuit can be averted it is far better; and it seems to me that the Comptroller, being an impartial man, is likely to do justice between different applicants, and if he declined to register there should be an appeal to the Board of Trade, and if the Board of Trade refuses, it should be easy to appeal to another court. I think everybody would accept the result. But I do not apprehend many appeals from the decision of the registrar for this reason, that a new trade mark has acquired no value; it has not been used, and if the registrar refuses it it is so easy for the applicant to say; "Oh, well, I will take another." It only costs him 5*s.* and he would take something distinctive. And on that ground I think there would be very few appeals against his decision.

1580. Is that the view of the Chamber of Commerce?—Well, it is my view. I do not wish to come into collision with my colleagues in any way. What I am saying this morning is for the interests of the trade as a whole. I think we are all bound together, merchants and manufacturers, and that no one of us should have control or preponderating influence in the administration of an Act like this.

1581. (*Chairman.*) What you rather fear is if you had a committee of experts that it would represent too much the merchants' view as distinguished from the producers?—I think it might, and although the members of that committee might be honourable and high-minded men, yet one's own interests come very close, and a man does not always see what is equitable when his own interests are concerned. Moreover, they are not certain of life; they may pass away and another set of men may come who would work great injustice, whereas if you have one man responsible you could always deal with him.

1582. (*Mr. Hutton.*) It has been given in evidence before us that out of 44,000 cases which were decided by the committee of experts in 1877 to 1879, there were only 170 cases which were appealed against?—I think that is so. If that committee of experts had never been appointed, there might not have been 70 cases of appeal. In those 170 cases I think the appeals were successful.

1583. I know in some cases they were, but was not that owing to the rule laid down by the Board of Trade at the time?—The Board of Trade acted very much according to the wishes of the Manchester Committee.

1584. The Board of Trade laid down their own instructions before the committee of experts undertook the duty?—They were very much influenced by the Manchester Committee, so that it comes back to Manchester again.

1585. That committee of experts in 1876 had among their number a good many manufacturers and producers?—No; only one, and he was nearly 80.

1586. Mr. Edmund Ashworth, for instance?—He was not a manufacturer.

1587. Does not he own large cotton works in Bolton?—He was a cotton spinner, but not a manufacturer. He, too, was an aged man. Mr. John Cheatham was the only manufacturer on that committee.

1588. Mr. Crompton Potter?—He was a calico printer.

1589. But he is a producer?—I call the man who makes the article the producer. A bleacher and a calico printer take the cloth after it is produced.

1590. (*Chairman.*) The bleachers and printers do not use trade marks themselves, do they?—Yes, the bleachers do. If a bleacher produces a better finish, a clearer and brighter cloth by his process than anybody else, of course he puts on his mark to say that that is bleached by him and by nobody else, and he is entitled to do it. The same with a dyer; if a dyer produces a better

Mr. I. Hoyle, M.P.

30 April 1887.

tint than anybody else he is entitled to put on his mark.

1591. You might have on the same goods a manufacturer's mark, a bleacher's mark, and a merchant's mark?—That is quite a matter of arrangement. If a manufacturer is wise he will conduct his business so that the merchant can make a profit, and if he always put his own mark on the merchant would be at a disadvantage. He will do what the merchant wishes very much, and hide the origin so to speak. If he gets a *quid pro quo*, that is to say, the custom from the merchant, it pays him to hide the origin, so that the merchant can sell it without anybody being able to trace where it came from.

1592. So that the merchant gets the reputation of the good article?—He gets his share of it, of course, and the manufacturer gets his share. I may mention by way of illustration that last November my firm had an offer from a Manchester merchant for a distant market for goods, delivery extending over 12 months. The amount of the proposed contract would have been 39,000*l.*; but one condition was that no other merchant for that market should be able to purchase the goods during the running of the contract. Now I am inclined to think such arrangements will become more common as time goes on, and so the merchant and the manufacturer will be linked together. Then we had another case this year, 1887, where an offer was made to us also for twelve months, for another and different market altogether, and all the profits of the transaction were to come to us. The merchant would work for nothing for 12 months on condition that we put such a price on the article as to prohibit any other merchant buying it for that market. Now I am inclined to think that arrangements of that kind may be made as time goes on.

1593. Do you mean so high a price?—Yes, prohibitory really. The interests of merchants and producers may be identified in another way, and I think it very likely too, that merchants will add to their great knowledge of the requirements of foreign markets, and their acquaintance with all the processes necessary to put goods on the market, that of producing goods themselves. I think it is likely that the best houses, after the Limited Liability Acts have been so amended as to stop bogus companies from being formed, and prevent capital being played with as it is played with now, will add producing to their business so that goods of high quality will pass through the merchant's house and maintain the reputation of the house.

1594. (*Mr. Hutton.*) As a general rule the merchants object very strongly to the manufacturer putting any mark upon his goods to show the origin of the goods?—Yes, and naturally. I think that is natural on the part of the merchant, and I do not complain of it in the slightest degree. I think the merchant is almost bound to do it by the necessities of his position.

1595. (*Earl of Crawford.*) In that case ought not the merchant to stand the expense of the many thousand pounds which this cost you a year?—That too may be matter of arrangement. Of course everything in business is matter of arrangement.

1596. If he objects to your putting on anything by which it can be identified as your manufacture he ought to make a special arrangement to pay you for that outlay. You say you lose 1,000*l.* a year by it?—Yes. The object in mentioning the great cost of these headings is to show that it is wasted except as a trade mark; that it has no other use than as a trade mark; and merchants will have it.

1597. (*Chairman.*) Apart from the question of the assistance of the committee of experts, the greater part of the cotton goods marks registered being from Manchester, there would be convenience in having the initial stages of the transaction in the matter as a whole dealt with in Manchester, subject of course to the head control of the office in London, would there not?—I do not think so. I do not think any legitimate advantage would accrue from having the earlier stages conducted in Manchester. I think great improvements might be made. The office in Manchester should be easily accessible, whereas now it is right away up in the top of the building and difficult of access. It should be on the ground floor so that anybody can run in easily. Manchester is a busy place, and people have not much time to spare. They should be able to go in on their way to and from the Exchange. Then another thing, there should be such an arrangement of marks on view that a man could see how many days would elapse before those would be out. For instance, if one set of marks would have run their time in seven days it should be put up distinctly, so that a man would see they would be gone directly and so on as to those which have the longest time to run. Then I think in some way the public should be apprised of applications, so that all parties who have registered marks would be kept on the alert to prevent marks infringing theirs being registered. Whether it should be by advertisement in the papers, or whether the list should be put up at the door once a week, but in some way I think the owners of marks should be advertised that new marks were applied for in certain classes. The Manchester office should be an exact duplicate of the London office. There should be everything in it there is in the London office, so that a man could get all information in every class of marks. If that were done the Manchester office would be what a reference library is, and the keeper of it would be the librarian.

1598. The views of some of the Manchester trade have been very strongly put before us in favour of enlarged powers being given to the Manchester office. You put before us a contrary view. Do you think your view is generally shared by manufacturers?—I have not sought opportunities of conferring with manufacturers, but registration is comparatively new, and manufacturers have not very largely availed themselves of it. As time goes on and as the improvement in manufacture goes on, as I hope it will, I think they will more and more see the importance of having their own specialities protected by a mark.

1599. (*Earl of Crawford.*) Did not I understand you to say that the merchant objects to having any mark put on the goods by the manufacturer?—Naturally, but I do not think he should have his way. If that were so it would tend to injure us as a manufacturing nation, in this way, a merchant having a registered mark is of course wishful to put his goods on the market at the lowest possible price, and there might be three or four makes of goods in the market nearly of equal quality (he might think them equal); and he has an order, we will say, for 10,000 pieces, if they can be laid down in Calcutta at such a price. He goes to the best maker, and if that man will take the price he gets the order, if he cannot then No. 2 may be tried, then No. 3 and No. 4. The merchant thinks they are all of equal value, but the very fact that he goes to one first shows that he does attribute a superior value to the one. The effect of that will be to put on the Calcutta market what is really an inferior thing. I think the principle on which we should work if we are to retain our trade, (and I think the greatest competition will come from the United States by-and-bye, they are running us very close now), should be of improving our manufactures year by year. Improvement in manufacture goes along with cheapness of production. The most perfect machinery and the most skilled workpeople will produce the best goods at the cheapest cost at the same time.

1600. It is the cheapest in the long run, is it not?—That is to the consumer. That is the consumer side of the question. The actual cost at first is less.

1601. (*Chairman.*) Do you mean it can be turned out by the manufacturer at an actually less cost?—Yes.

1602. (*Mr. Hutton.*) The better the quality the less the cost?—Yes, except in cases of adulteration.

Where goods are purposely adulterated, then of course the man who skilfully adulterates can produce cheaper than another. I am speaking now of where the raw material is of the same value to begin with. Then the finished article will cost less to the man who produces the best article.

1603. (*Chairman.*) You mean that the extra skill and intelligence, and good machinery employed, given the same materials, will actually turn out a better article at less than inferior machinery, inferior skill, and inferior intelligence?—Yes; and the men who fail are, as a rule, the men whose productions cost too much, and are at the same time inferior. They sell for less what has really cost them more.

1604. (*Earl of Crawford.*) How does that come out. I cannot see how it would be. You have first of all to put in machinery which has to be the very best, and you have the interest on that outlay; you are employing the best hands with higher wages consequently; you have the same material wrought with more care, that is more supervision, therefore more to pay for it. Those three added together must exceed the price which is paid for the same material with a less depreciation of machinery for inferior staff and with less skilled labour?—It would seem so, but it is not really so as a matter of fact. In the first place a manufacturer builds a new mill of the most approved dimensions, lofty and well ventilated, and fills it with the very best machinery that money can buy. If the concern is well conducted there is a depreciation fund from the first. He knows that machinery will get old, and, unless he has a depreciation fund, he will have nothing to buy new with. That is a first charge. He attracts skilled workpeople and pays them good wages. The out-turn from that mill will be better in quality, there will be a larger production, and that cheapens cost. The article itself is better, any expert will tell you that it is so, and the cost to the maker is less. If you want an illustration I might mention the Salts of Bradford the Holdens who invented wool-combing, and the Listers, also of Bradford. The best machinery and skilful manipulation of raw materials make large fortunes.

1605. (*Chairman.*) I suppose if you, by extra skill and intelligence, have a much larger out-turn in the same time, of course the cost of production which consists of the wages and interest on machinery, and so on, is spread over—the expenses are spread over a much greater quantity of goods, and therefore may be less in respect of each piece of goods?—Yes, that is so; but given a mill of equal floor space of the old arrangement and old machinery, the quality produced is inferior and costs more. I am speaking from practical experience. There is this point, that whilst a manufacturer produces cheaper and better goods at the same time, and so retains the trade in his district, and in the country the tendency, if a merchant puts on a stamp to an inferior quality, is to lower trade and to give foreigners an advantage; and I can see no way out of it but a closer union between merchants and manufacturers, an interweaving of common interests.

1606. (*Earl of Crawford.*) But the manufacturer is not aware what stamp is going to be put upon his goods. I do not see how that closer community could work?—I will tell you. A manufacturer who produces a superior article does not reap the advantage at first. He must sell it as cheap as anybody else; but when it has got into good repute then the competition for it pays him for the trouble he has gone to.

1607–8. He sells the same quality to two different merchants?—He may sell it to half a dozen or a dozen.

1609. It has got a reputation with a certain mark upon it?—Yes.

1610. It goes to a foreign country, and it is sold with A.B. and a crown on it, perhaps. After a time, supposing that merchant is not quite an honest man he might buy an inferior quality of cloth, mark it with the same mark, and sell it out there, and so make something by it. That would, after a while, depreciate the value of the cloth itself, supposing it is still being made by the same manufacturer?—That might happen. In that case the manufacturer himself might become a merchant and so export his own goods.

Mr. I. Hoyle, M.P.

30 April 1887.

1611. It is not every manufacturer who has capital to become a merchant, or who has the capabilities?—No.

1612. (*Mr. Hutton.*) A very large number of manufacturers are merchants, that is, they consign their goods to India and China on their own account?—I should hardly say a large number. There is a number, and I think the number is increasing.

1613. Do they, in those cases, put their own trade mark on?—In some cases they do, and in some they do not. In some cases they consign through a Manchester house, and the Manchester house will use its own mark, advancing money on the goods from the moment they are delivered.

1614. We had it in evidence before us that one special trade mark, which is valued at a very high price, is put by one of the large shipping houses in Manchester, on eight or ten different qualities of goods, very fine goods, and very low coarse goods; and yet the owner values his trade mark at a very high rate?—Are there any other distinctive marks besides the stamp?

1615. On the same goods?—On the different qualities.

1616. I do not know whether he has any distinctive marks to show the quality?—There must be something to enable a purchaser to tell what he is buying. If it is a generic stamp, so to speak, then there will be a specific mark which shows what the quality of the goods is that this generic stamp is on.

1617. You said just now you thought it would be desirable that the whole process relative to applications for registration should be still conducted in London. Do you consider it to the advantage of the trade, in the case of a small shipper who has a registered mark, and somebody is trying to infringe it, that he should be compelled to come up to London and defend his own case at the Board of Trade, and not be listened to in Manchester?—I think the value of the decision would be so great in London that it would cover all the cost of coming.

1618. Is not it rather hard upon him that he should waste his time or lose his time in coming up here to defend an original and distinctive mark which he has had registered for years, and which somebody is trying to pirate. Is not it rather hard that that cannot be settled in Manchester?—I think it could not be settled equitably in Manchester. That is my contention. It is utterly impossible for you to have an equitable administration in Manchester, or one that contributes to the maintenance of our manufacturing supremacy.

1619. Is it not the case that the houses are desirous of coming to an understanding between themselves, I am speaking of the houses of position, not to interfere with the trade marks of each other?—I think that is an unfortunate feature of the present administration of the Act. I do not think that it should be open to merchants to come to arrangements for registration, because it may depend not on the merits of the case, but on caprice. If I am friendly with a man he says, "Oh, certainly, use it." If I happen unfortunately to have quarrelled with him, he says, "No; "I will not let you have it at any price." Now I know a case, where an Egyptian merchant used a certain well-known mark, and unfortunately did not register it. Another house, in the Australian trade, registered the mark; and the Egyptian merchant, in the course of time, applied for registration. He was met by the fact that it had already been registered, and he came to me for advice. I took some pains to get an arrangement. The Australian merchant said, "No; I shall "not consent to registration unless you (the Egyptian "merchant) will give me something worth while. If

Mr. I. Hoyle, M.P.

30 April 1887.

"you will give me 500*l*. I will consent." That happened within my own knowledge.

1620–1. (*Chairman.*) That was to consent to its being registered, I suppose, by the Egyptian merchant on condition that he did not send his goods to Australia?—Precisely. I do not think that ought to continue. I think the responsibility should rest on the Comptroller only.

1622. (*Mr. Hutton.*) That is that no one should be applied to to give a consent?—I think not. I do not think it is for the interest of the trade.

1623. In the various instances where the Comptroller has passed marks for registration, do you think it desirable, where those marks are really not distinctive features, and interfere with the distinctive features of other marks, that they should be registered without reference or without obtaining consent?—I do not think any mark ought to be registered that is not distinctive; that is my strong contention.

1624. (*Chairman.*) But in the case you put, of course the Egyptian merchant would have been without remedy?—Precisely, and it was his own neglect; he had neglected from the date of using it. He had used it two or three years.

1625. (*Lord Macnaghten.*) You think that is better than that he should be allowed to regain his property on payment, perhaps, of an exorbitant sum?—I think he had forfeited his right to it by his own neglect. Every man should look after his own business.

1626. I am not quite sure that I see what harm would be done by allowing consent on condition that the goods were not sent to a particular market?—It is rather an intricate question: consent given or withheld may depend on so many other things than the actual merits of the question. As I said before a new mark has no value, because it has never been used. It has no value as a mark. But if it happened to have a value, and the man who wanted to register the second or third time was a new beginner he might be boycotted, and we know that great improvements are made by men in humble circumstances. Rich men do not often introduce improvements, but it is the poorer men that I think ought to be protected. In my own case we fought a decision of the committee of experts at very serious cost. The court decided in our favour, and the Comptroller, fortified by the opinion of the committee of experts, said he would appeal; but he altered his mind, and did not. Now that was a case where, if we had been poor people, we should have forfeited the right which was established by the Court of Chancery.

1627. (*Mr. Hutton.*) In your case it was simply the action of the Comptroller in compelling the committee of experts to reject your trade mark?—No, it was the committee of experts did it; the comptroller had nothing to do with it, and did not know there was such a thing in existence at the time of their decision.

1628. The Comptroller laid down a certain rule to go by, which was that if there were three trade marks of a similar character they were not to register any one of them; that was in the evidence?—Yes, but did not that come from the Manchester Committee?

1629. No, it was in the instructions?—Of course I cannot examine you; I am here as a witness.

1630. The instructions are here given by the Comptroller, before the committee of experts commence their work, that in all cases where more than three persons apply for registration for the same mark for the same description of goods, such mark must be considered as a trade mark not within the meaning of the Act, and consequently be placed with marks belonging to the second class under Rule 59. Was not it the case that your mark coming under that rule was placed amongst the second class B?—Yes; that in the judgment of the experts was so, but the Court of Chancery said they were wrong.

1631. They were compelled, as I understand, to do it in consequence of the rule laid down by the Comptroller?—Not at all; it was a matter of judgment with them. They said it was so nearly like others that it ought not to be registered. The Court of Chancery, having seen all the marks that came in conflict with it, decided it was distinctive and special, and entitled to registration. The committee of experts said it was not.

1632. (*Chairman.*) Then of course the committee of experts might say that their view was the view which had been taken by the whole of the trade, and that the trade knew better than the judge probably?—I do not think any body of men should be above the court. It seems to me that everything depends upon the court being supreme.

1633. (*Mr. Hutton.*) But under the present mode of conducting the work of registration, if the Comptroller here was supreme he would register everything that was placed before him?—I think you would have protection. The owners of trade marks are invited to examine all applications. The Comptroller may make a mistake, but it is the duty of the owners of marks to see that their property is not improperly dealt with.

1634. Where can they see that?—I think if there were alterations made in the Manchester office such as I have suggested, it would be easy to see that.

1635. (*Chairman.*) Yours was the case of an old mark?—Yes.

1636. But in the case of new marks, I understand according to your own view it would not so much matter if a mistake were made in refusing a new mark. Would not, on the whole, less mischief be done by a strictness in refusing than by a laxity in admitting new marks?—That is decidedly my opinion. I am thoroughly with the Committee in Manchester in desiring that the owners of old marks should be protected to the full, only I do not want them to have the thing in their own hands. I do not see how they can adjudicate fairly.

1637. Still you do not differ from the principle which they have put before us, that there may be a dangerous laxity in admitting new marks on the ground that they have certain differences from the old ones, although any person in the trade would say that they were so near as to be calculated to deceive?—I think that would be a serious injury to the trade; and if the Comptroller did admit such marks, an injury would accrue at once to merchants or other owners.

1638. So far as I understand, you do not differ from them in the view of what ought to be the mode of administration under the Act. Your difference is that you would not be content to leave to any body of them the administration?—That is so.

1639. (*Lord Macnaghten.*) Then do you think they would be too strict in excluding marks which had some similarity. Is it a general objection to the principle of a person having anything to do with deciding a case in which he is interested, or is there any special danger you think might ensue?—I think the danger lies in human nature itself.

1640. A sort of general objection?—Men are naturally prone to protect their own.

1641. That I understand perfectly; but in this particular case it would lead them rather to be strict and jealous in admitting new marks?—Yes, they might exclude marks that ought to be admitted.

1642. You think they would be too strict?—Yes, I think they might harass an applicant to the injury of the community.

1643. You do not mean that they would harass an individual, because I suppose there is public opinion in Manchester?—Yes; but public opinion does not rectify everything. I think whilst you are about it you had better have as perfect a system as it can be made.

1644. That is quite true; but the decisions of a judge in London, unless he was, to some extent, to use an expression that is very much in vogue, in sympathy with Manchester, would not command respect there, I suppose?—I have never known a Trade Mark case when the decision has been im-

pugned, generally. We are a law abiding people in Manchester.

1645. (*Chairman.*) I think you must be rather singular if you have not heard them adversely criticised?—I cannot call one to mind. I do not remember a case of a trade mark decision being impugned.

1646. (*Lord Macnaghten.*) Sometimes the Court of Appeal takes a different view from the Court of First Instance?—The final decision of course is the one I speak of. With regard to a committee of experts the Chamber of Commerce in Manchester held its quarterly meeting last Monday, and Mr. Bailey, who has studied this question very carefully, speaking on the proposed amendment of the Merchandize Marks Act of 1862, said, "There was no difficulty whatever "in any merchant finding some stamp which in a more "or less remote degree could be looked upon as the "imitation of another stamp." If that be so, if a merchant's eyes are so quickened as that, and if a committee were appointed to supervise all applications, it would make registration impossible. I copied those words from the "Manchester Courier." I quote that by way of illustrating the extreme danger of committing this matter to any body of men, whether manufacturers or merchants, whose interests are so deeply concerned.

1647. (*Chairman.*) Is there any other point to which you wish to refer?—There has been considerable discussion about the registration of words, and it seems to me doubtful whether there is any advantage in permitting the registration of fancy words. It is merely an opinion. I doubt it. There was a mark registered sometime ago, "Boulevard velveteen, the best make in the world." That is an absurdity. "The best make in the world" may be the second best to-morrow, and the third best the day after. I do not know whether you wish to know my opinion about appeals.

1648. Yes, if you have anything to say about it?—If wrong has been done to the owner of an old mark redress should not be difficult. For that purpose, I think, the appeal should be heard in Manchester.

1649. You approve of the proposition to give the Palatine Court jurisdiction?—Yes. The registrar should exercise great vigilance as to admitting a mark that resembles another; he is bound to be extremely careful. At the same time where a mark is distinctive, the applicant should find it easy to register. Before I leave the room, I wish to refer to the false marking of lengths. That has given a good deal of trouble in Manchester of late, and a scheme was agreed upon which, it was thought, would stop it; but I believe recent intelligence from India shows the scheme has broken down. If so, the law should deal with false marking.

Mr. I. Hoyle, M.P.

30 April 1887.

1650. That is rather for the Committee sitting in the House of Commons than for us?—I quite agree it is so; but it throws light on the effect of competition between merchants; the competition is so extreme that the tendency is to give us a bad name in foreign countries.

1651. I understand you to allude to that as illustrating what you have said about the merchant not being the only party interested in the question of trade marks?—Yes; there is no complaint of manufacturers giving false lengths. I do not hear any complaint, so that it illustrates the difference in the position between a producer and a distributor.

1652. (*Lord Macnaghten.*) I suppose the merchant checks the manufacturer?—Yes, of course.

1653. (*Mr. Hutton.*) Have you never heard of a complaint of a manufacturer delivering a shorter length than he has contracted to deliver?—That may be; but it is so easily detected: the thing is stopped at once; but when goods have gone 3,000 miles it is rather different. The manufacturer delivers his goods in Manchester, and the merchant checks the length on delivery, excepting in the case where a manufacturer is known to give full lengths and then they are frequently shipped without examination. That you have no doubt found in your experience.

1654. I have had experience in manufacturers delivering 32 yards and invoicing them as 36. It was only found out after the goods had been dyed; and he said he did not contract to deliver 36 yards of 36 inches?—There was perhaps a fault in your warehouse in not checking the lengths before delivery to the dyer.

The witness withdrew.

Mr. ALFRED JULIUS BOULT called in and examined.

Mr. A. J. Boult.

1655. (*Chairman.*) I believe you are a patent agent and have had experience in the working of the designs and trade marks division of the Patent Act?—That is so.

1656. With regard to designs it has been suggested that the register should be open to inspection instead of being secret as it is at present, what do you say to that?—I think it would be a most excellent thing that it should be open to inspection. The patent registers and documents are all open and I really cannot see that any evil result arises from that practice, on the contrary I know it many good results come from it, and I believe that it would be the same in the case of designs.

1657. Do you know why it has been prohibited in the case of designs?—Indeed I do not.

1658. That did not come up for the first time in the new Act, that was the old law, I believe?—It was.

1659. You do not know the history of that?—I am sorry to say I do not. I believe there was an idea that confusion or difficulties might arise from parties being able to inspect designs, but after all I cannot see that that would be more so than in the case either of trade marks or patents.

1660. (*Mr. Hutton.*) Are you speaking as to designs in general on articles of every description of all classes?—Quite so.

1661. Was not it the case that the calico printers objected very strongly to the designs being exposed to the public?—I think they did; but after all a good many people might object to their trade marks or patent specifications being exposed. At the present time in Austria there is a certain class of patents that are called secret patents; you cannot see those specifications. That occasions a very great deal of difficulty. I am not aware that that really does any good to anybody. I think the same remark applies to designs.

1662. Do not you think somebody might try to pirate another man's designs if they were all exhibited to the public?—I really do not see why they should do that any more than with patent specifications.

1663. They might do that prior to registration?—No, the design could not be on the market prior to registration; it would invalidate the registration, it has to be registered first.

1664. (*Chairman.*) You might have registration by a well known house who had important business connexions of a design or designs which they intended to be their next season designs. If they were at once published you would afford a temptation to people to try and get as near them as they could without pirating them, and so to put their rival goods on to the market, perhaps of inferior quality, at the same time as the others?—Then I would suggest that that difficulty might be got over by some form of bond or the like that the manufacturer would undertake that he should not put his goods upon the market until a certain date and the office would undertake that that design should not be open to the public until that date; but at the same time if designs are registered as quickly as they used to be, in about three days, the manufacturer could really manage perfectly well to effect the registration of his design and the putting of his goods on the market almost simultaneously.

Mr. A. J. Boult.

30 April 1887.

1665. You refer to the short time that used to be taken. At present there is very considerable delay?—Very considerable delay. I have not the slightest idea why it arises. The change, I think, occurred somewhere about the end of last year. I have never heard any explanation of it, but the fact is undoubted.

1666. It is very prejudicial?—Yes, there is no doubt whatever about it. If your Lordship would permit me, on that point I would say that I have repeatedly had very strong letters indeed from manufacturers in the country, in Leicester and in Nottingham, stating that they have got a large number of circulars printed and that they are only waiting to fill in the number of the design, and they have positively had to keep new seasons goods back for weeks, and in some cases months, because they were unable to put the registered number upon them.

1667. I believe you also have something to say about the proper classification and indexes?—All I would say about that is, that some system of classification should be adopted such as can be worked out. I clearly understand that it would be a matter of considerable difficulty to classify them precisely, but still they should be classified as nearly as they can, and the alphabetical indexes particularly should be kept so that ready reference could be had to the names.

1668. You have, I believe, also something to say with reference to the form of opposition?—That, I think, is rather with reference to trade marks. My proposal would be that in the case of designs it would be useful if a simple and cheap form of opposition were allowed. I think that would get over the difficulty suggested just now, and would enable any manufacturer who was interested to oppose and show his grounds for opposition. As a rule where opposition would be required would be in cases of special trades, which generally are in special centres. For example, the boot trade of Leicester, the hosiery trade of Leicester, and the lace trade of Nottingham. The manufacturers there have a pretty good idea upon what lines any other manufacturer is working, and they would be able to settle the matter very quickly, so that I do not think any difficulty need occur on that point.

1669. I believe that is all you have to say with regard to designs?—I think that is so.

1670. A suggestion has been made to us that it is undesirable that the Comptroller should consider the question of similarity at all; that he should register every design that is brought to him, whether it was like or unlike previous designs. What do you say with regard to that?—I think the Comptroller making the search is a very useful feature, it is done, as your Lordship is aware, in trade marks, and I think on the whole with good effect, and I do not see why it should not be done in designs. That of course brings up the question of classification to which I referred just now.

1671. (*Lord Macnaghten.*) Of course it would delay the registration?—Yes; but not necessarily, I think, very long, because trade marks at one time, at all events, were accepted tolerably quickly, and after all it is more a matter of the method and arrangement in the office of conducting the searches how long they take. If the classification is good, such searches as that can be quickly made, but if the classification is not good it would take a long time.

1672. (*Chairman.*) Turning then to trade marks, what suggestions have you to offer?—With reference to the searches your Lordship is aware that at present the public can search the registers upon payment of a fee of 1*s.* per quarter of an hour. I cannot see the necessity for that fee. Anybody can search the patent registers which are far more voluminous, and I think far more important, for the whole day or the whole year without paying anything. I cannot see that it is necessary that he should pay 1*s.* a quarter of an hour for the use of the books of the trade marks, and I would certainly throw them open. Again, with reference to trade marks, the indexes ought to be very much better than they are, I think. There should be, at all events, an alphabetical index open to the public, which at the present time appears not to be the case. An alphabetical index would very much assist, both as to subject matter and as to owners of marks.

1673. I think you have something to say with regard to rejected applications?—Yes; and that is really a very important point. A man files an application for a trade mark. We will say it consists of the letters *x* and *z* in a circle. It appears that somebody else has got the circle, and the Comptroller objects to the mark because of the circle. The usual course would be that notice is given of this objection and a day fixed for the hearing. The hearing takes place, and the Comptroller says subject to search I will accept the mark if you remove this circle. That is frequently done, and under the old *régime*, and not very long ago either, all that was necessary in that case was for the applicant to pay a second search fee of 5*s.*, and supposing nothing else was found in the way of it, his mark was registered and he secured his original date. Under the present arrangement the orginal date is sacrificed. The Comptroller says, I will accept that now you have altered it to suit my requirements, but you will have to file a fresh application. It is very clear that in the interval, which would often be six weeks, or perhaps from three weeks to two months, not merely one man but many other men may have filed the identical application without the circle, the same letters, the same mark, without the outer border which was objected to, and they would have the earlier date although they were not the original applicants.

1674. Is it quite clear that they ought not to have it. They filed an application for something which was admissible, the earlier applicant filed an application for something which was inadmissible; and in the meantime someone else has applied for the part of it which was admissible. Has he not a prior right? Why should the first man be allowed to get a mark, which was not the mark which he put forward, when somebody else had applied for it in the meantime?—I think I have not, perhaps, made myself quite intelligible. My contention is that the original applicant filed the substance of the mark; the whole thing might be an important label, and all that was objected to is some subsidiary part. The Comptroller says if you strike off that subsidiary part you may have your mark, but by the present system of altering the date he loses that if somebody else happens to have applied in the meantime.

1675. It would all depend on whether it was a subsidiary portion merely, or whether it was an essential part of the mark?—That would be so. If it became practically a new mark, certainly a fresh application would have to be made. I would draw the line at additions. If the Comptroller says I strike off a great part of it you will have to do something or make a new mark, then, of course, the application should bear the later date; but where it is only a portion that is struck off, the mark is not altered beyond striking off some portion, so that what is left is what was originally filed. There I would most certainly give the original date. I have known several cases of difficulty arising from that.

1676. Your next point is with reference to notices to owners of registered marks?—Yes. I believe that a good deal of unnecessary obstruction is raised to trade marks in consequence of notices being sent to owners. That is not done in the case of patents except in the case of an applicant for a patent, and I think that it is not necessary to do it with trade marks.

1677. Then you have something to say as to bonds for oppositions?—That, as your Lordship will readily see, has the effect of preventing many oppositions which I think ought properly to take place. I have a case before me just now, I will not go into all the details as they were rather involved, but there is no doubt the opposition was a very proper one. The man has practically had to withdraw it because he is not prepared to stand the 200*l.* bond. A person can oppose a patent, and the cost will amount to a nominal sum compared to 200*l.*, and I do not see why it is necessary that he should give such a bond.

Mr. A. J. Boult.

30 April 1887.

1678. Is it under any rule that he gives the bond? —Practically it is, because the opposition to a trade mark is an action at law. It is taken in the courts, whereas the opposition to a patent is before the Comptroller with an appeal to the law officer.

1679. Why in going to the courts is he bound to give a 200*l.* bond?—I do not know. It has been the custom for many years in the Trade Marks Office, that is the course that is always adopted. That is the only reason I know of, because many patent oppositions of course are far more expensive and important, and yet no bond is required.

1680. What have you to say with respect to hearings in opposition before the Comptroller?—I would merely suggest that any hearing in opposition to trade marks should be before the Comptroller the same as in the case of patents as being a similar proceeding, and involving much less cost. I do not see that anything is to be settled in trade marks which is not to be settled in patents, and the proceedings could be just the same with great advantage to all parties, and a large reduction of the costs, besides dispensing with the bond.

1681. What is the mode of opposition in trade marks now?—It is in fact a proceeding in court. You have to take action in court before the judge, and the judge decides it. It is really like a patent action, not a patent opposition.

1682. Do you mean to get some mark removed from the register?—No, but to oppose a man registering a mark.

1683. That is under section 69?—Yes.

1684. Then I believe you have something to say with reference to post office orders?—A practice which I cannot help regarding as exceedingly stupid prevails that sums over, I think it used to be 1*s.*, and I think it is about the same now, must be paid by post office order. It is so utterly unnecessary, and gives so much unnecessary trouble that I cannot think that it would stand the light of investigation for a moment. I never heard anybody speak of that except to grumble at it.

1685. (*Earl of Crawford.*) Do you mean they will not take cash?—They will not take cash. Of course in the case of fees for making a search they take cash over the counter, but for other things they will not take cash. The difficulty has been got over under the new Act to a considerable extent, because the fees are now paid by stamps, which can be obtained at Somerset House or in the Law Courts; but where you have to pay them, they still require them in post office orders. They will not even take a cheque from people they know.

1686. Or a postal order?—I think they will take a postal order, but I am not certain. Formerly they would not do that, it was simply a post office order.

1687. (*Chairman.*) I think the last point you have made a note of is that appeals on refusal to register should no longer be made to the Board of Trade?—That is probably merely a matter of form. It is generally understood, and I think it is a natural result, that where an appeal is made to the Board of Trade from a decision of the Comptroller, the Board of Trade usually refers it to the Comptroller for his opinion upon it, and sometimes outsiders think it is not quite so impartial a tribunal as it would be if it went independently to the law officers. It really follows out the same course that I was suggesting that the Comptroller should decide in the first instance and then refer to the law officer.

1688. Instead of the appeal to the Board of Trade? —Instead of the appeal to the Board of Trade, because the Board of Trade as the Board of Trade presumably does not go into the question of trade marks. It refers either to the Comptroller or to the law officer.

The witness withdrew.

Mr. CHARLES HENRY NEVILL called in and examined.

Mr. C. H. Nevill.

1689. (*Chairman.*) I believe you are prepared to give the Committee some evidence with regard to the views of the calico printers as to the working of some portions of the Trade Marks Act?—With regard to the portion of the Act which refers to designs as applied to our own trade. There is a feeling in our trade, at any rate in Manchester, where I think there is a very large portion of the calico printing done, that clause 47 is not clearly enough defined as regards what is a new and original design. It is contended, of course with a very great amount of reason, that there is nothing practically new and original, that we all have to get our ideas from outside sources, and when an outside source has been adapted to our trade the question arises what constitutes a new and original design; and it is felt that if this could be in any way amended so as to make it a little more clear it would be a help to the trade.

1690. Has any practical difficulty arisen with regard to it?—I will suppose a case. Suppose I have sent over from abroad, we will say, embroidery, or silk, or something of that sort, with a request that I shall get up a suitable design for the purpose of printing it on calico. I may not take the silk exactly. I adapt it to the exigencies of my own trade. I probably introduce a few fresh features in it and produce a print which probably sells in the market. Then my neighbour, seeing that my print is a very good one, and is supposed to be doing well, sets himself to work to find out where my idea comes from, and he gets the original silk; then with the original silk and my print before him he can produce a design which will damage me in the market. Some of the printers hold that the man who gets the original source should be entitled to the print that he produces. I cannot say that that is my own personal idea on the matter, but it is very strongly held.

1691. Can you suggest any definition?—My own suggestion, if I might venture to say so with great diffidence, would be this; (I had a little talk with Mr. Hutton this morning, and I feel that this a very difficult question, but I sat down and thought it out for a little time after I got back to my hotel, and I think something of this sort might meet the case): "A design shall be considered new and "original when it contains in its drawing or mode of "treatment such differences as may readily distinguish "it from any common source of origin." By a common source of origin, I mean a source that you or I or anybody else might find outside. I do not mean that a common source of origin would be somebody else's pre-registered design. There is a question also as to what constitutes a fraudulent imitation. I have put them together: "And any imitation thereof shall be "considered fraudulent which incorporates such dif- "ferences." I thought if the Committee could see its way to recommend that when a printer through his intelligence, and perhaps his position, expending more money in getting his ideas from abroad of what the native buyers want, gets hold of something which is really practically novel in a market and he adopts it, if he so adopts it that the pattern he produces does carry some novel features on it, his neighbour shall not be able to take the same silk or other material, and put the printer's own interpretation on it.

1692. I do not know whether you are acquainted with the facts in the case of Grafton *v.* Watson?—I did not take very great personal interest in it, but I knew the general outline of the case. I never saw the designs.

1693. There the courts did determine that although the particular fruit which was the object feature of the design of Mr. Grafton, was to be found in something that was known, yet that design might be imitated by a person imitating his distribution of parts and light and shade, and so on, so producing a similar effect, although he also used other known and different feature objects as the groundwork of his design?—Yes, I hold that we calico printers are divided into two classes. There is the class who do not wish to

Mr. C. H. Nevill.

30 April 1887.

be copied, and there is another class, and I am sorry to say rather a large one, who wish to have the Act framed so that they can sail as close as possible to a line. I need not say I do not belong to the second class. I do not myself wish to see this Act made too stringent, too close, or too difficult, that is to say, I do not want to create a monopoly, put into the hands of those calico printers who lead the trade. That is my own private feeling.

1694. (*Mr. Hutton.*) Some calico printers wish to register every style?—I am dead against that altogether. It is a hampering of trade, and I know it is not the intention of any Act of Parliament to hamper a general trade. Personally, I do not see that style can be claimed at all. It is sufficient if the Act of Parliament protects our brains in producing designs. Perhaps I may be allowed to allude to clause 51, which is a clause with reference to every article being marked with a prescribed mark. Of course I see that this applies generally to all sorts of different manufactures. It is necessary if a man brings out a fancy inkstand that he should put a registered mark upon it to show that it is registered. Take our own trade, where we get cloth in lumps, as against pieces. It has grown from originally 25 to 30-yard pieces to 130 to 150 yards, which are called lumps of cloth, and which the merchant never sends out as such. I may say it is an invariable rule that they are cut up into 10, 20, 30, and 45 yards. In the process of cutting up any stamp that we, as producers, put on, of course is ripped off. It is a little vexatious that we should be compelled by the Act to put a stamp on the two ends of a 150-yard piece. If we miss putting it on we miss the benefit of the Act. It is absolutely useless when it comes into the merchant's hands.

1695. When the article is shipped it has no mark on?—No, and it is impossible, I think, that it should be arranged so that it could have a mark on when it is shipped.

1696. (*Chairman.*) And yet it is compulsory upon you to put it on?—Yes. Of course the circumstances would be gone into. If intentionally neglected we lose the benefit of the Act. We have to depend on our workpeople; we have to keep sets of books showing which patterns are registered, and I have not the slightest doubt lots of pieces go through which are not stamped which ought to be stamped. We do the best we can to avoid any pieces being missed, but it is a useless thing. The moment the goods delivered to my customer the registration marks are torn off.

1697. (*Lord Macnaghten.*) What do you suggest?—That with regard to our own goods we might be exempt. That is, of course, only with regard to our own class. I can see it is a very necessary thing on other sorts of articles, but it is useless and vexatious to us.

1698. (*Earl of Crawford.*) What trouble does it put you to; is it a hand stamp?—Yes, the registration only lasts for four years; that is three years and the portion of the year in which it takes place. We have many patterns 9, 10, 11, and 12 years old. Ours is a wholesale business. Of course it means that all these orders have been set on one side, and we have to keep a very careful record of the patterns that require stamping, because, I do not know whether I am right, but I believe, it is equally fraudulent to stamp it on any thing the registration of which has run out. It is felt to be a hardship in our trade, simply because it is absolutely useless the moment the thing leaves us; it is no protection to the public. It is no information to the public that the goods are registered.

1699. (*Mr. Hutton.*) How do you manage the stamping of patterns when you send them out. To obtain orders you send out patterns of your registered designs?—I think it has been held that a design sent out and kept in private hands has not been published. If I supply you with a design and you bring it back to me it has not been published. These designs are often sent from our customer to their customer in India, and they fix upon certain of these designs, perhaps 10 per cent., and then they come back here, then we engrave them, and register them, but we have always held that as long as the design is in our own and our customers' hands it has not been published. There is a clause which I should like to draw your attention to which I believe some of the printers would like altered, that is clause 52. It says, designs shall not be open to inspection; there is a feeling that in these days of free trade they should be open to inspection by paying a fee. I think the clause as it stands is an exceedingly good one; there are a great many printers who would be running up to the designs' office to see what their neighbours were doing and to get their ideas. They get them quite soon enough in the legitimate way of getting them back through the markets.

1700. (*Chairman.*) Would you object to this limited alteration of it. Where a new design is proposed to be registered and the Comptroller rejects it, if he considers that it is the same practically as any already registered design, it has been suggested to us that where it is rejected on that ground it is a hardship that the person who has presented it for registration should not be allowed to see the design with which it conflicts?—That is business.

1701. You would see no objection to that?—No, certainly not.

1702. (*Lord Macnaghten.*) Would you object to it being open after your goods are on the market. That was suggested?—All these, I think, are suggestions to help the copier.

1703. I do not see how that would help him; for instance, you bring out a design for next season. I can quite understand that until your goods are put upon the market you desire to have that design kept secret, but when the goods are once put upon the market I do not see what advantage there is, when they can see the design on the goods themselves, in keeping the registered design secret?—I think there is a certain advantage, because all people have not the same facilities for getting the goods back again from the market on the other side. It takes a little trouble. It would be a very simple matter if the designs were all open to anybody on paying a small fee.

1704. (*Chairman.*) You mean in that case he would use the brains and expenditure of money of those who have registered the designs to help him to produce rival designs?—He might not otherwise see my design for two years, but he could see it in six months at the office.

1705. (*Lord Macnaghten.*) He would follow you faster to the other market?—Yes.

1706. (*Mr. Hutton.*) As a rule, it takes from 12 to 18 months for a market to respond to a new article?—Yes, it may not take it all at once; it may come out as a very little order to begin with, a little sample of a thing that has not paid the printer at all, but he thinks it a very good thing, and the merchant also thinks so, and they risk something. In a wholesale business like ours it does not pay to do small quantities, but we do them as sample orders. It will not be till one or two big orders are repeated that the other people begin to prick up their ears and say here is a good thing. There is no doubt about it, there is a large section of our calico printers who live upon the goods already going in the market, and they come as near to them as they possibly can. Really those people want to know "how nearly can we sail?" Therefore I say it is a rather good thing to leave it a little vague. Every case requires consideration on its own merits.

1707. (*Chairman.*) What is your next point?—Clause 58 is the most important clause that we want altered. It says:—"It shall not be lawful for any "person without the license or written consent of the "registered proprietor to apply such design or any "fraudulent or obvious imitation thereof." We want, if you can see your way to do it, to be able to get a little further back than the man who actually applies the design or copy. It often happens in our trade that a merchant brings designs to a printer (merchants are not all honest, I am sorry to say), and he assures the printer that they are original designs. The printer puts them on in good faith. Supposing they are

Mr. C. H. Nevill.
30 April 1887.

copies of mine, I cannot possibly go against a brother printer who has done a thing unwittingly, never intending to defraud me at all. I want to get at the man who led that printer astray.

1708. You want it to extend not only to the person who applies but to the person who causes or procures it to be applied?—Yes, not by making that person a co-defendant with the printer, which I believe can be done now, but to pass the printer and go straight at the merchant. I know that if we could have done that it would have been a very great help to us since this ct has been passed, because perfectly innocent and honest printers, small men who are anxious for business, to whom it is very important to get in with the large houses, are tempted by the merchants to do things which they would not do if they knew all the circumstances of the case. I want to be able to make the merchant directly responsible. I think that is really the most important alteration that you could possibly make in this Act.

1709. (*Mr. Hutton.*) Is that the view of the principal calico printers in Manchester?—I think that is almost the universal view, because you see sometimes these small printers, who are not always quite as careful as they ought to be, have been dropped on very heavily under this clause, because of course legally they are responsible for their actions.

1710. When it is the merchant who really ought to be punished?—Yes, my own experience is this; I have known many cases where I have had my patterns copied, and I have simply dropped the matter entirely, because I did not choose to go to law with the printer, being satisfied with his version of the matter. I could not go to law with the merchant unless I made him a co-defendant with the printer; the injustice was done and I had no remedy.

1711. (*Chairman.*) There is another point to which I think our attention was called in a communication on this subject with reference to one offence and several offences?—I do not know that I could offer any interpretation of "every offence;" it is for a lawyer to decide what "every offence" means.

1712. The suggestion is that it needs some further definition?—"Every offence" I take it would mean every time a man prints a piece.

1713. (*Mr. Hutton.*) That for every piece of calico he prints he is liable to a penalty of 50*l.*?—Yes, just as every time a man produces another man's patented inksland he would be liable. Of course we know that a 50*l.* penalty on every offence of that nature would be a very excessive penalty.

1714. (*Lord Macnaghten.*) Especially if the man who instigated the commission of the offence is to get off with one 50*l.* penalty?—Yes. If you take it that "every offence" is to mean every single transaction, the order may be for 10,000 pieces, and then 50*l.* would not cover it.

1715. It would want some alteration with regard to the person who gave the order for the 10,000 pieces, because he would only be liable to a penalty of 50*l.*; but he would be the real offender?—It would be excessive if it were to be considered as applying to every one of the 10,000 pieces, and it is not enough if it applies to the whole transaction.

1716. (*Mr. Hutton.*) How has it been decided in the courts of law?—I no not know, I do not think it has been tried.

1717. In the Grafton case?—Did he go for damages?

1718. (*Chairman.*) No, he went for an injunction?—This clause has been a most useful clause as to the 50*l.*, because you can easily understand it is sometimes very difficult to prove a money damage. You may lose your command of the pattern in the market, but you cannot prove that you would have done another 10,000 or 15,000 pieces, and perhaps there was no loss upon any particular order, but still you know you have lost business through it.

1719. A penalty of 50*l.* seems hardly enough if it were only a single sum of 50*l.*, because it might be worth a man's while to incur it?—If the order were big enough. I suggested when the draft came down before the Manchester Chamber of Commerce that the penalty should be put at 100*l.*, and I read it at that time, not having gone so carefully into it, to mean every transaction. I think 100*l.* would go a long way; it is a good fine on the transaction. The next clause you see protects us, supposing the damage done to us is over and above 100*l.*, we can sue for damage as well.

1720. (*Mr. Hutton.*) You could not put it in the case of a calico printer at so much per piece, you could not define it?—No, there is a usual trade custom among ourselves, or there was before this penalty was put on, that where a man will not defend an action at law, and admits he has done wrong, he must pay one shilling a single piece. That is a fine a man must pay if he does not choose to fight. This penalty of 50*l.*, and not having to sue for damages, has been a very great help to the trade, because when one knows one is absolutely in the right, one lets a man elect whether he will meet one properly and pay a reasonable amount of damages, or whether he will be sued for penalties.

1721. (*Chairman.*) There might be an advantage in leaving the question of penalty vague?—I think so. I do not think it would have much consequence. Of course no judge would ever give 50*l.* on every single piece, he would only give such an amount as was reasonable. The words are "not exceeding;" he can assess it at what he likes.

1722. Is there any other point you wish to bring before us?—There is nothing else that I can suggest. I look upon clause 58 as the most important, that we should be able to get behind the printer and to look at the principal.

The witness withdrew.

Adjourned to Saturday next at 11 o'clock.

Board of Trade, Whitehall.

Saturday, May 7th, 1887.

PRESENT:

LORD HERSCHELL.
THE EARL OF CRAWFORD.
LORD MACNAGHTEN.
THE RT. HON. A. J. MUNDELLA, M.P.
JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. J. LOWRY WHITTLE recalled, further examined.

Mr. J. L. Whittle.
7 May 1887.

1723. (*Chairman.*) You are, I believe, and have been since the Act of 1883, under the Comptroller, superintending the administration of the trade marks portion of the Act?—Yes. If your Lordship will

Mr. J. L. Whittle.

7 May 1887.

allow me I would mention my experience in regard to trade marks. I was for several years a member of the Bar, and was acting in 1876 for the late Mr. O'Hara, as draftsman of bills at the Irish office. In that year the first Trade Marks Registration Act came into operation, and I was appointed Assistant Registrar of Trade Marks and Assistant Registrar of Designs, with the duty of assisting Mr. Lack in the interpretation of the new Act, and aiding him generally in the discharge of his duties under that Act. As regards those two departments of the Patent Office, that arrangement continued until 1880, when, on the resignation of Mr. Wilde, Lord Cairns appointed me Registrar in Lunacy to the Lord Chancellor. The duties of that office were re-arranged towards the end of 1882, and distributed between the Masters and the Principal secretary, and at the same time my successor at the Patent Office had resigned from ill-health, and Sir George Jessel proposed that I should return to the Patent Office, resuming the duties I had previously discharged as regards designs and trade marks, and taking, in addition, similar duties as regards patents. That arrangement continued until the passing of the Act of 1883. Then the Board of Trade proposed to relieve me of any responsibility as regards patents, but that I should have a special responsibility as regards trade marks and designs, "an increased responsibility," as Sir Thomas Farrer expressed it, acting under the general direction of Mr. Lack, but with special access to the Board of Trade, and responsibility to them. With the exception of from the year 1880 to the close of 1882, I have a knowledge of all the work of trade mark registration since the system was established.

1724. You have been furnished with a copy of the evidence which has been given by the various witnesses who have come before us upon the subject of trade marks?—Yes.

1725. Have you any memorandum of the order in which you will refer to them?—Yes. I assumed first of all that the question raised by Mr. Courtney Boyle as to relieving the office of responsibility for the distinction between one trade mark and another is not at present taken up by the Committee. I see it has not been discussed by the witnesses. What the Committee want to ascertain probably is, first of all, how the present system actually works.

1726. Yes, I think that is the point to which our attention is, first of all, directed?—I propose first to refer to the trade marks sections of the Act, and the interpretations which have been put upon the Comptroller's duty under these sections from time to time, and to go into the Manchester question, excluding under the first head the question of words, which I would reserve for this third special branch, and which is closely connected with the Manchester question. Fourthly, then I will go into the question of staff, and make some general observations on the suggestions made by the witnesses from time to time.

1727. I suppose you have carefully considered the suggestions made by Mr. Edmund Johnson?—I have. I should like, first of all, briefly to go through the sections of the Act. On the supposition that your Lordships are prepared to recommend some amendment of the Act, I should like to go through Mr. Johnson's suggestions. Section 62 I call attention to as an enabling section for registration of a trade mark, and I should like, in view of the evidence which has been given, to suggest the idea of a trade mark as entertained by the Patent Office, whatever it may be worth. I is a mnemonic for goods. The old sense of a trade sign—a personal sign—is lost very much. In giving protection to trade marks the primary idea is the interest of the consumer. The interest of the proprietor the secondary idea.

1728. Do you mean that that is so from anything which appears in the Act?—No; I am assuming that this is the interpretation to be applied to the word trade mark in the first sub-section. Then the form of the application is prescribed, and there is a power to refuse. The Comptroller has a certain jurisdiction implied in sections 62, 72, 94, and 95. I may mention, in connexion with that, that the principle of considering the interest of the consumer is brought out in section 79, sub-section 5. This is, I submit, distinctly indicated in the provision that a mark that is removed from the register cannot be appropriated by anybody else for a period of five years, so that if a well-known firm disappears, the people used to getting their goods should not be imposed upon by getting somebody else's goods. Then I suggest that the Comptroller, having a discretion given him by section 72, all these sections imply a certain reading into his work of the state of the law upon trade marks at the time, which is a state of the law developing from year to year; it is a recent branch of the law. *Millington* v. *Fox* is the leading case upon it, decided in 1838; and you have since a whole series of decisions working out the principle of protection to this ideal property, which is not chattels and not real property, from *Croft* v. *Day* down to the case of *Schmidt*, decided the other day by Mr. Justice Stirling.

1729. Section 72 only specifies two distinct grounds (there may be a difficulty in determining in what circumstances they apply) upon which the Comptroller is to refuse to register?—Yes.

1730. It does not import the general law at all?—No, but I submit that what is a trade mark, and what is a conflict between one trade mark and another, must be got at, to a certain extent, by the Comptroller in the discharge of his work. It is not got at conclusively. He is not a high court of law. I consider his position, to some extent, analogous to that of a magistrate; he has to give the public the benefit of as much knowledge of law as can be got reasonably for 25*s*.

1731. Section 72 does not involve any question of law; it involves two questions of fact. The first question under the first sub-section is whether the two things are identical, and the next is whether one thing so nearly resembles another as to be calculated to deceive. Those are both questions of fact and not of law?—That is a matter which I submit to your Lordship. It is not to be dealt with as by a jury. It would not do to put the two marks together. You have to judge by ascertaining trade custom and the principles, as far as one can, whether the marks are likely to conflict.

1732. I was not suggesting that you were merely to use your eyesight and not employ any other mental faculty, but, still, whatever you introduce, it, after all, comes to a question of fact, even if you introduce all trade customs that have been ascertained. It comes to a question of fact whether the one so nearly resembles the other as to be calculated to deceive?—Yes, it comes to that, certainly. My object is to avoid the idea that putting the two marks together would settle the question.

1733. (*Lord Macnaghten.*) Surely that never was the legal view?—I am afraid it is the popular view. I have heard it laid down even in this chamber that that was the right way of dealing with it. That is a question on which I would invite the attention of the Committee. I would just mention one phrase that constantly occurs—that you are to look at the mark. That is a very natural phrase to prevent people spinning propositions about a mark; it is constantly used in the reports, and that has been appealed to as supporting the theory that you have only to put the two marks together to settle the question. Of course you must look at the mark and you must take it as a whole; but the phrase "taking the mark as a whole" is just as often used in favour of an application to restrain from infringement as in favour of the proposition that there is no resemblance between the two. A man is proceeded against for using an elephant, and he pleads that his mark shows a peacock as well. If they look at the mark as a whole they see that the elephant is a conspicuous part of the mark. Then as to section 64, a very distinguished authority on these things admits that a great knowledge of law is required in interpreting section 64. I would refer to sub-section *c* as regards the term brand. That is an example of the vagueness

of the terminology used in these cases. "Brand" is properly and originally a trade mark applied in a particular method either to leather or to casks.

1734. (*Chairman.*) By being burnt in?—Yes; but it has got to be used very much as equivalent to the term "label." It has been frequently argued before the Comptroller that almost anything that was not a conspicuous label or device should be passed as a brand.

1735. How have you interpreted it at the Patent Office?—I have interpreted it, and the Comptroller has borne me out in that, as a synonym of trade mark.

1736. As a synonym of device or mark?—Yes, the term "distinctive" applies to brands. Brand is frequently used for the conspicuous printed part of a Scotch whiskey label.

1737. (*Earl of Crawford.*) Probably it was originally sent out in a cask which was branded in that way?—Yes.

1738. (*Chairman.*) We were told, I think, that at the Patent Office you had limited brands to the classes of tobacco and tin plates?—Tin and terne plates. I found in 1884, when I had almost the whole of the work, the Comptroller being very busy, that there was a great effort made to introduce everything as a brand. I think myself the term "distinctive" governs the whole clause, but after a conference with the Board of Trade, Mr. Calcraft gave directions that we should accept anything for tin and terne plates.

1739. (*Mr. Mundella.*) Is it not also used with reference to marking bales of Colonial wool?—Yes.

1740. (*Chairman.*) What is the difference between a brand and device or a mark?—I do not think there is any difference. I think the variety of those terms has not been intended to cover different procedures, but merely as an indication to the public that they might come in and get the benefit of the Act for whatever they called the sign of their goods.

1741. Taking the brand as dissociated from the idea of being burnt in, what sort of characteristics have you permitted in the case of a brand which would not be permitted in the case of a device or label?—In Class 5, in which tin and terne plates are included, we take names geographical and otherwise, such as "Truro." It is a small class.

1742. If that is permissible as a brand why should it not be permissible as a label or a ticket?—I have only been able to accept that under the direction of Mr. Calcraft as a settlement and a limitation of the question of brands which I got the Board of Trade in conference to arrive at in 1885. We were getting everything run in as brands.

1743. What I do not quite understand is why you permitted anything as a brand that you would not have permitted as a label or ticket. If you were more lax in what you permitted as a brand I can understand that everybody wanted brands, but I do not see the advantage anybody gets in calling it a brand other than he gets if calling it a label or ticket?—That was the idea that we could or should be more lax in accepting a brand than in accepting anything else. The question is whether "distinctive" applies to it.

1744. What is your view with regard to sub-section *a*? Has that been acted upon at all?—Very rarely. They have only been those cases where a name has been sent in which was really equivalent to a device. For instance, "Duval" was accepted under the Act printed in representations of knives and forks. That was the restaurant keeper. Another man's name was accepted in devices representing organ stops so as to spell out the name. There has been nothing accepted under *a* that would not be admissible as a rebus or device. Then, to go on to the sections, section 68 is compulsory as to the advertisement. It is strict, whereas there is a certain discretion left to the Comptroller in the other sections. As regards section 72 there is the great question of what constitutes resemblance. I do not know whether your Lordships would care to go into that. That of course has to be taken in connexion with section 62 as regards appeals to the Board of Trade.

(*Mr. Mundella.*) It leaves you a very great margin, because the expression is that he shall not register "a trade mark identical."—That is as regards sub-section 1. Sub-section 1 is only of importance, I think, in reference to the three mark rule. There has been a good deal of suggestion about that.—There was a practice under the Commissioners of Patents of registering old marks without the intervention of the court, even though they were identical. I think that grew up more or less under a misapprehension. The words of this section are, I think, identical with the words of the Registration Act of 1875. Early in 1884 I think I got an opinion from the law officer upon that point, and the previous practice was pu an end to.

1745. (*Chairman.*) Under this Act the court has followed the old practice of registering for the three?—Yes. The question was how it was to be done. I think it was a matter of procedure.

1746. Have you anything to say about section 73?—No. Questions have been raised under it to some extent, and it was worked at one time. The Commissioners of Patents refused a number of words like "warranted," and a variety of guarantees and excessive puffs, and things of that sort; but that was abandoned early. We have not had much reference to it since.

1747. It has not been of much practical use?—No, it has not been practically dealt with.

1748. Do you happen to know what was its intention? Of course, we cannot interpret it by that, but that might give us some light in suggesting amendments of it. I do not quite gather its intention from its language?—No, I never was able to ascertain. I think it was frequently discussed; but I do not think that there was any clear idea of how it got in.

1749. Was it in the Bill as originally introduced in the Commons, or did it get in in committee?—I think it was in the Bill as originally introduced.

1750. What is the next section to which you wish to call our attention?—There has been a good deal of controversy, or, at least, many suggestions, as to the alteration of sub-section *b* of section 74. The Board of Trade took an opinion upon the proper interpretation of section 74 as regards new marks. Their view was that the omission of the power to disclaim a device on the new mark meant that no such device should appear on the register as part of a new mark. Accordingly, although there is a disclaimer of common words, we have to refuse what we recognise as a distinct element, being common to the trade in the way of a device. That view may be founded on the principle that Sir George Jessel endeavoured to assert, especially in the case of Barrow, of keeping a trade mark distinct, and not having it crowded up with other elements, and so on. However, in practice it is a great inconvenience, because, in the case of labels, people put on a certain number of devices which are understood to be common,—a sort of advertisment portion of their marks; and people acquainted with marks recognise the element of the trade mark readily enough. Then I have ventured to suggest to your Lordships that the question of resemblance is a difficult and delicate question which must be worked out by constant attention to the current of jurisprudence at the time as well as it can be by public officials. That is one of the questions which your Lordships would probably have to consider. I know that Sir Thomas Farrer, if I may quote an absent authority, thinks it difficult, if not impossible, for a public department which is not fortified by judicial strength to attempt any work of the kind. My conception of the duties of the Comptroller, and Mr. Lack's own conception is, that he is, with the best knowledge he can get, to exercise this very minor judicial faculty or a sort of judicial discretion under this section; and that then the power of appeal to the Board of Trade, which was introduced in the House of Commons, is to regulate his work, but that the duty is not incumbent on the Board of Trade to sit as a jury or a judge on the work. The words of the section are not very clear or conclusive.

Mr. J. L. Whittle.

7 May 1887.

1751. The words are, "so nearly resembling a trade mark as to be calculated to deceive." Do you, in the administration of that section, take into account, in the Manchester classes, the custom of the export trade—the fact that the marks are used in foreign countries, where foreign languages only are understood? Are those elements all taken into account in considering whether the one mark so nearly resembles the other as to be calculated to deceive?—Yes, I should say to a certain extent all those ought to be considered, and we endeavour to consider them as to difference between export marks.

1752. (*Lord Macnaghten.*) I suppose you take everything into consideration as far as you can?—Yes, and accordingly, as a general rule, I should say that in the export trade the doctrine of resemblance ought to be stricter than, for instance, in the apothecaries' trade, which we know, as a matter of fact, to be local. It is our duty to look at the mark, and at the nature of the business suggested by the mark, as far as we can in each case.

1753. When you come to a case which seems to you to be doubtful, do you try it out, or do you lean in favour of rejecting it?—I should say the tendency at the office was to lean in favour of accepting. The first conception of the Comptroller's duty is to accept. He has no business to put difficulties in the way, but I myself have avoided leaning one way or the other.

1754. (*Chairman.*) If there is such resemblance as to be calculated to deceive, more harm would seem to be done by laxity in accepting than by strictness in rejecting, would there not?—That is what I have sometimes endeavoured to urge, especially when you consider this, that we are dealing with another man's property in his absence.

1755. (*Lord Macnaghten.*) When you are dealing with new marks it cannot make so much difference to the person who proposes it?—That, I think, is a very important consideration.

1756. (*Chairman.*) If you too readily accept, it is not only that you may injure a man who has already a mark registered, but you may, if it is an honest case, give very little—perhaps nothing—when he wants something, to the man whose mark you registered?—You may delude him.

1757. He may think that he has a distinctive mark which will be of some use to him, whereas it is of no use to him, and conflicts with somebody else's. If it is an honest case he wants a distinctive mark for himself. Does not there seem to be more harm in being ready to accept than in sometimes rejecting somewhat rigorously?—I think so.

1758. (*Mr. Hutton.*) You mentioned that you would consider the trade?—Yes.

1759. Do you consider what is so nearly resembling as to be calculated to deceive you or to deceive the trader abroad where the goods are going?—To deceive the trader abroad.

1760. In the country where the goods are to be sold?—Yes.

1761. So that if there is a distinctive feature in the mark which is calculated to deceive the purchaser abroad you would reject it?—Yes, if it were reasonably probable.

1762. (*Lord Macnaghten.*) Would you endeavour to follow the trade mark as far as it extends?—Yes.

1763. To the ultimate consumer, if the trade mark is presented to him?—Yes. You cannot follow it up into the hills to some tribe who might consider a trade mark a fetish; but that should be the effort, I think. I would ask your Lordships to let me show you some examples of what I think is the reasonable application of the doctrine of resemblance.

1764. Is it put anywhere better than in Lord Cranworth's judgment in the case to which you referred just now, *Scixo* v. *Provizende*?—I think that is the leading case. It has been argued that that is a case depending upon name only; and that doctrine has to be considered. There is a case which is often quoted on the other side, the *American Cloth Company*. That, I think, is an unsatisfactory case, and I think subsequent decisions have modified it. Of course, it is a case worth looking at, as showing the difficulties which are sometimes raised. There are five different views of that case. It was a case of infringement, and as a new mark, I think, there would be no question that the mark against which the injunction was asked would be absolutely refused by the Comptroller, supported by the Board of Trade, because the devices were so nearly similar. Lord Hatherley took one view of it, and gave the injunction. Lord Westbury reversed that, on the ground that the applicant had not a proper mark at all. The House of Lords went into the differences of the marks to some extent, and Lord Westbury delivered judgment, to some extent adopting the opinions of his colleagues, but practically returning to his own, that the original mark was an advertisement and not a mark. Lord Cranworth subsequently gave another view of the case, in that case of *Scixo* v. *Provizende*. Then may I refer to this question of appeal? My idea of the duty imposed upon the Board of Trade by Parliament, which everybody knows they are most anxious to discharge in the interest of the public, is that they should see that the work of the Comptroller was done in order, and that he should give an account of his work; but that they were not obliged to sit as judges in the ordinary sense, or as a jury. That, I think, the working of the Board would show is impracticable, they have not the machinery for it. Trade marks ought to be continuously in the hands of one person. That was the idea in specially charging me with the department in 1884. I do not believe there is any very great mystery in trade marks at all; but there is a constant knowledge of a variety of details which must be kept up, and if I go away, after three weeks' holiday, I find I cannot do my work as quickly and surely for a day or two, until I have got perfectly *au courant* with certain details connected with the work. When a case goes to the Court of Appeal like the case of *Orr Ewing* v. *Johnston*, then it is threshed out in every form, and the judges become conversant with it. In ordinary work the business must be done by somebody who is dealing with marks from day to day, and who is familiar with them. I think that was the view entertained by the Board of Trade up to May 1885, that the duty imposed upon them by Parliament was to revise our work, not to undertake it themselves.

1765. (*Chairman.*) Our attention has been called to the alleged variability of practice at the office in accepting and rejecting. I suppose you are going to deal with that matter under a later head?—Yes; especially as regards Manchester. The view that we had to give an account of everything we did gave us a great deal of advantage. I do not at all hold the doctrine that has been stated, and which has been expressed to me by Mr. Calcraft, and I know is entertained even by higher authorities, that it is a toss up between one trade mark and another. I think, if marks are carefully considered, the inability to discriminate between one trade mark and another would not happen in one case out of a thousand.

1766. (*Earl of Crawford.*) Surely some one ought to be able to find out the rule which guides you?—In my experience of some 60,000 marks I think that that could not apply to more than one in a thousand, if so many. I do not see that it would apply to any.

1767. Do you mean that you have only rejected 60 marks?—I say that of the 60,000 marks I have seen, I cannot imagine more than 50 or 60 in which that doctrine could possibly be maintained.

1768. (*Chairman.*) You mean about which there can be any question as to the decision being right or wrong?—Yes; if you take sufficient care you will always be able to say whether a mark should be accepted or not.

1769. There must in this, as in other cases, be some things on the line?—Yes.

1770. (*Mr. Hutton.*) How do you account for some marks, almost the same, being at one time refused and at another time accepted?—I shall come to that. I shall be able to identify a number of those as regards Manchester. I would draw attention to the mode in

Mr. J. L. Whittle.

7 May 1887.

which appeals were dealt with by the Board of Trade in 1884 as a contrast with the practice adopted after May 1885. These appeals taken to the Board of Trade were discussed. Mr. Murton arranged a conference with me and we examined the thing thoroughly. Those cases I referred to he was good enough to look up carefully; and if the case was simply as to a mistake on the part of the applicant, a mark which ought to have been claimed as old and which was claimed as new, the Board of Trade heard it; and if it was on a legal ground, and the parties chose to fight, it was referred to the court. There was a certain outcry that the Board of Trade were taking fees without doing any work. I believe there was some statement that the meaning of that section was that matters should only be referred to the court in cases of grave legal difficulty. I have not seen the opinion given, but I have heard there was such an opinion given. Then the duty was undertaken with great diligence by Mr. Calcraft of dealing with these appeals himself.

1771. (*Chairman.*) The suggestion has been made to us by more than one witness that it would be an advantage to do away with the appeal to the Board of Trade and to let the matter go, as, of course, to the court, instead of there being power to refer it to the court; do you think that would be generally desired by those interested in trade marks?—I think they do not like the present appeal to the Board of Trade at all; but I think the interpretation, if that is consistent with the Act, of the Board of Trade's functions adopted in 1884, was very useful.

1772. I do not quite understand what interpretation you refer to?—They ask for an account of our proceedings if an appeal is lodged. They examine with the law officer, Mr. Murton, who is an exceedingly able man, the grounds on which we decide.

1773. He is their law adviser?—Yes. He went over the cases, and if they saw we knew what we were about, and had not done it arbitrarily and hastily, and had not done it by mistake, and that there was no mistake which the applicant could correct, the Board said: "Well, you must go to the court." Then the parties were satisfied that the matter was not done hastily, and that what had been meted out to them would be meted out to other people, and they very rarely went to the court.

1774. You mean they always, if the parties desired it, referred it to the court. if, after considering it themselves, with the Comptroller and the solicitor to the department, they came to the conclusion that they could not interfere?—Yes.

1775. As I understand, if, on considering the matter in that way, and hearing the Comptroller, and receiving the assistance of their solicitor, they came to the conclusion that the view taken by the office was not right, then they would themselves put the matter right?—Yes.

1776. But if after considering it in that way they came to the conclusion that they did not differ from the Comptroller, then they gave the parties the option if they pleased to go to the court?—Yes. I think there was one case where there could be no doubt the mark would be almost identical. I think they heard them in that case and gave the party the opportunity of having his say without plunging him into a suit. I think that power interpreted in that way and worked in that way in 1884 and the early part of 1885, should be extended to people who object to the Comptroller's action.

1777. To those who objected to registration as well as to those who objected to their application being refused?—Yes. People, instead of being put to opposition in court under section 69 might, if they were disposed, raise the question by appeal to the Board of Trade whether the mark should be passed.

1778. The suggestion has been made that if the Comptroller's decision was not accepted, the opposition should proceed by appeal to the law officer in the same way as in the case of patents. What would you say with regard to that?—I think it would be a great improvement on the latter view of the Board of Trade. I may mention before leaving that subject that in the earlier period Sir Thomas Farrer wrote to me: "I think we may congratulate you as well as "ourselves on the success with which the arrange-"ment has worked." That was referring to the work up to the middle of 1885. I may mention in connexion with that a very important change which has recently taken place under the Act. The Comptroller may be a party to certain law proceedings. I think the work of trade mark registration for the public is most valuable in that way in marshalling a lot of evidence and experience which the Comptroller in disputed cases can put before the court. It gives the courts the benefit of expert evidence as it were. It is not marshalled for a particular conclusion, but submitted to the court. Under the old system of the Commissioners of Patents, whenever the Comptroller was a party to a proceeding, he addressed a formal letter, of which I will submit a copy, to the Secretary to the Treasury, asking for his authority to have the Comptroller represented. Mr. Stephenson then sent some solicitor to us, and he took instructions from the Comptroller. If the matter was a serious matter he fixed a consultation, the practice of the office was thoroughly presented to the court, and the points thoroughly understood. If it came to be a question of appeal, we applied to the Treasury for their sanction, but the case of the Comptroller was conducted by the Comptroller, and through his direct instructions. Latterly the Comptroller has been represented in court without any instructions from him at all. I have heard Sir Horace Davey describe our practice in interesting terms; that they had not any basis except the idea of any gentleman at the Board of Trade who happened to have given instructions. This is a matter which I mentioned to Lord Stanley. I think that deprives the court of rather useful assistance in working the law. Now as to the question of resemblance. I may say this, perhaps, as an illustration. I have always endeavoured myself, and I believe I speak Mr. Lack's views on this point, to take the mark as a whole and to put the two marks together, but to consider what was the impression likely to be produced by each mark and likely to dwell in the memory: a principle with which I started when I said the trade mark was a mnemonic. It is a substitute for invoices, a substitute for various tests to help the consumer to find the goods he wants. You must take the leading idea of the mark, and if you have a mark with a certain number of parts, such as that you must count up the different parts to remember it, it is not a true combination, it is merely a collocation. For instance, take the case of an alligator. An alligator and a man together is not a combination; but an alligator with a man in his mouth becomes a combination. That would be raised by a case which I fancy your lordship has seen, namely, the *Normal* case. It was discussed very fully with the Board of Trade. There happened to be a buffalo's head in one class against it, and there happened to be a very similar fish in another class, and the question was whether it was a combination. The Comptroller contended that the circle round it was nothing but the outline of a label. I cannot produce it, but you can see a poster representing that mark at Victoria station, where the circle is reduced to a very fine line, whilst the bull's head and the fish have become enormously large, so that it is nothing but the superposition of the two marks. The Comptroller's contention was that that did not make a separate combination. He was bound to refuse the mark in view of the buffalo's head.

1779. It might be said, looking at these, that the buffalo's head being quite as prominent as the fish, and the fish being quite as prominent as the buffalo's head, the idea suggested by this would be the fish below the buffalo's head or the buffalo's head as above the fish, and that nobody would think of it as a buffalo's head alone, or as a fish alone?—I am afraid that in use, if people were familiar with the buffalo's head for their particular goods, that they would take that as a modification of the same property.

Mr. J. L. Whittle.

7 May 1887.

1780. (*Mr. Hutton.*) Are they both registered separately, the fish and the buffalo?—Yes.

1781. (*Chairman.*) Was the buffalo's head an old mark?—Yes, I think it was an old mark, which was registered for some years.

1782. And the cod-fish also?—Yes. You see, my Lords, as a matter of fact, in commerce people do not use a single mark and stick to it in one form, but they work it up in their labels in a variety of forms. Even Messrs. Bass combines other objects with their principal mark, and there is a celebrated maker of a smoking mixture "Will's" who has a star as his ruling mark, but this appears in about 40 different juxtapositions.

1783. There was not only a cod-fish in a previous old mark, but there was a cod-fish as a distinctive portion of a mark of which it only formed a part?—Yes, a distinctive portion of a label.

1784. Of course, if a cod-fish in combination with something else had been a distinctive mark before, one could understand that a cod-fish with a buffalo's head over it might be calculated to deceive?—Just so. Here is another case I may hand in to your Lordships, in which there is a similar difficulty (*handing in marks*). Two of those marks are common devices, and one of them, the clasped hands, is an old mark; but the Board of Trade felt some difficulty in dealing with it on that view of Mr. Murton's, that they should be taken together.

1785. (*Chairman.*) These are not cases to which our attention has been called by previous witnesses, are they?—That clasped hands case has been mentioned by Mr. Bailey.

1786. I think it might be convenient, probably, to take all that evidence together, and to take each case one by one in reference to the complaints made in Mr. Bailey's evidence?—I rather mentioned that as illustrating the different view which was taken as to how the system worked. I propose to go through the Manchester cases later. Then I should like to mention as to Manchester, that I have had a good deal of work in connexion with that from early times with Mr. Lack, who undertook it, chiefly in 1876 and 1877. It must be recollected that the whole question of trade mark administration in the cotton classes has to be taken in connexion with the delegation to a committee of experts of certain functions under the Act of 1875. I felt myself, although one should not be wise after the event, that if the Treasury, who were principally concerned, and who have borne the expense, had made up their minds to undertake the question, they might have done it with a great saving of cost and trouble to the public and to everybody, by sending down some experienced official who would have got the assistance of a couple of these gentlemen—Mr. Fry referred to hundreds of them in his evidence—who were ready to assist the committee of experts in appealing for marks to be sent in, and I venture to think that in a few months, say, seven or eight months, the whole thing might have been put on a satisfactory basis without any such machinery as the committee of experts. But the whole system of trade marks registration was new, and there was a great apprehension of the enormous multitude of these marks and the tax it might be on the trade of Manchester. Two million of marks were mentioned on one occasion. All the marks dealt with by the committee of experts are not more than about 60 or 70 thousand, and if the outstanding marks are not better they would not be worth much, because a very large portion of the marks in the second class marks are not marks at all. The great proportion of the marks shown in the 164 volumes of the second class marks are very slight indeed, and would not be dealt with as being trade marks in any sense of the word. The work was undertaken; the committee of experts was invited to do it, and they gave their time very generously, and took very great pains. The difficulty has been since that, that the State departments have dealt with them, as I venture to think, in hot and cold fits. And there has been great embarrassment to the public in every way, and to the working of the list. Sometimes the committee of experts' views, which I think were somewhat hastily formed, have been supported at every hazard up to every point, and then they have been thrown over to the winds altogether. Then they have been taken up again to a certain extent.

1787. So far, you agree with the view that there has been some variability of practice?—I think great variability. The first thing to be considered in attempting any settlement, or arriving at a *modus vivendi* as things now stand, is the strong local feeling at Manchester (for which I have a great respect) that all business is done better in Manchester than anywhere else; and if this was a department of business which was within the scope and possibility of their doing it, I am sure they would have done it better than could be done here; but as I have already stated, I think this is a new branch of law that requires to be worked out in a central department, and under, to a certain extent, personal control. Whatever may be done, if the Manchester demand is continued, 20 or 30 years hence, the decentralisation of the trade marks registration might be very well managed, but I do not think the time has come for it yet. That local confidence in the efficiency of Manchester business you will not get rid of, and certainly the mode in which the work has been conducted by the State in this particular department naturally encourages it.

1788. I suppose you agree that as regards what have been called the cotton classes, the vast majority of the work is Manchester work, either properly so-called, or relates to trade marks of those who have their agents in Manchester?—Yes, a great portion of it. I may mention this as illustrating the difficulties of the committee of experts, the facts alluded to by Mr. Fulda in the evidence, which you had before you. He told you that they rejected a certain number of marks because they thought the people had no claim to them. The title of a particular claimant they had no right to inquire into. That of course was quite outside their functions. As the committee of experts, their business was to take and arrange such marks as their trade knowledge showed to be separate properties in one class, and marks that they considered to be common in other classes. They relied on their notion of trade wants and declined to consider what the statutory limitations were, and accordingly, I think, it is very natural that as men of business they did not stop to consider whether it could be done by this Act or by another Act at another time; but they made their list according to their view of what was right.

1789. (*Mr. Mundella.*) When you speak of the power of decentralisation, do you think it will ever be possible so to decentralise as not to submit the whole of the marks to some central authority so as to prevent conflict?—I am suggesting what might possibly happen 30 years hence if there is a development of trade marks registration. At present I do not see that it is possible.

1790. (*Chairman.*) Supposing that the matter were, in the case of these classes in which Manchester is so much interested, initiated in Manchester and dealt with in the first instance there, that is to say, that whoever was at the head of the Manchester office investigated the matter, formed his opinion as to whether the mark ought to be accepted or rejected, and it was then sent to the London office, the ultimate decision remaining with the Comptroller, the Comptroller of course being guided, as he naturally would be, very much, except in a case where he felt bound strongly to differ, by the opinion which had been formed at the head Manchester office. Do you see any objection to such a system as that?—I do not think it would get rid of the friction.

1791. Friction between what and whom?—Between the views of certain sections of the trade of Manchester. If it was understood that the Comptroller was still bound by his duty to pronounce an opinion whether the mark was in accordance with or in conflict with the Act, the difficulty would remain.

1792. Still the Comptroller would naturally be

very much guided in the case of Manchester marks by the opinion of the Manchester official, who might be supposed to know what would be the view that would generally be taken by the trade. Supposing that the work were administered on that basis, of course the Comptroller would be still Comptroller, having, as he must have, an ultimate decision. Do not you think that there would be much less friction than there is at present?—I am afraid that would bring us back to the difficulty of the committee of experts. That was practically what the Commissioners of Patents did. They took the finding of the committee of experts as final, and they fought that out until it was upset by the House of Lords in *Orr Ewing* v. *The Registrar of Trade Marks.*

1793. Sheffield has its own administration very much, has not it?—But entirely on different lines. Sheffield has what the Manchester Chamber proposes to leave to London, that is, the satisfaction of having the registry there and filing certain papers there, but it conducts its work entirely under the direction of the Comptroller.

1794. Is there any official there who forms any opinion or gives any advice with reference to the registration?—No; they do raise objections on behalf of the trade; not on behalf of the office there, but simply as one of the public.

1795. What has been suggested to us is this: that the head of the Manchester office, who was in touch with the trade, would be likely to form on the whole a conclusion which would satisfy the trade. If so, and the Comptroller only interfered with him upon a clear view that he was wrong, and had fallen into some error, do not you think that would be likely to give more satisfaction to the Manchester trade than the present system?—I cannot see that it would be anything different from what was offered in 1876 and 1877, which provoked such great opposition.

1796. (*Mr. Hutton.*) What opposition did it provoke?—Well, it resulted in some of those very heavy law suits. *Orr Ewing* v. *The Registrar* was one, and there were 600 marks taken out of the B list by order of the Court from time to time.

1797. (*Chairman.*) That was dealing at one blow with an enormous number of marks?—Yes.

1798. No doubt anybody in individually dealing with such a question as that would be sure to arrive at conclusions, some of which would be questioned. But that does not show, does it, that an official who is well conversant with the particular trade, and its views, would not be more likely to come to a conclusion on the whole satisfactory than an official who has not that knowledge?—It might possibly be so, but I have certainly no confidence in that scheme myself, I must say, for this reason, that I have seen a great deal of Mr. Fry. Mr. Fry is as clear-headed a man of business as can be, and I think quite experienced in trade mark work. He knows a great deal of the law about trade marks, but I have never been able to get any legal presentation, or presentation which will stand in a court of law, in defence of certain views which he states as the views of certain firms which have to be considered, and which, if not adopted, would provoke the opposition of those firms; but he never could give me any clear reasons which could hold water.

1799. On these legal questions, of course, I should apprehend the matter would not be determined, and I do not in the least suggest it should be, by Mr. Fry, or whoever was at the head of the Manchester office. I meant merely a question which was a question of experience and business, namely, questions arising under section 72?—Then it comes back to whether they are simply questions of business or not. Of course there is this to be kept in mind. I have been arguing rather in favour of restrictiveness in objecting to new marks, but at the same time, I know this as a matter of fact, that a large business man sees his own mark or some suggestion of his own mark in every object that meets his eye. The more intensely he is interested in his business the more susceptible he is on that point. Mr. Fry gave me a great deal of assistance and a great deal of information when he was here in 1884, but very often when he pointed out an objection it was not his own opinion that the mark conflicted, but that so-and-so would object; and sometimes if the Comptroller was unable to act on that suggestion the mark went on, and sometimes it was stopped. That was the result of his conclusions. He has never pronounced any opinion on the subject himself specially, he has only pointed out that he knew from the state of business that these questions would be raised.

1800. Is not that the only way in which it would be possible to deal with questions under sub-section 2 of section 72. It would be very difficult to give reasons why you said one thing so nearly resembled another as to be calculated to deceive, but you might be perfectly satisfied that it did on a consideration of the one and the other, and the effect which was likely to be produced on a person's mind. It might not be always so easy to put your reasons into print, though you might give some of them?—I should like to read an example of how that matter worked. There is a case here which I recollect discussing when I was at Manchester with Mr. Bailey himself, and he agreed with me that we were right (*producing marks*). The blue paper contains the mark applied for, and the mark outside is the registered mark of Messrs. Ralli. The Comptroller thought that he could not refuse the mark applied for in view of the other,—the difference being between a nude figure and a robed figure, and the difference between east and west. In view of a particular decision, which I should like to show you, he thought he was bound to accept it. Mr. Bailey said that we were quite right, but that he would stop it, and he did.

1801. (*Mr. Hutton.*) By appeal to the Board of Trade?—No, by notice from a solicitor.

1802. (*Chairman.*) That he would stop what?—That he would prevent the applicant going on with the mark, because he thought he would be able to make out a case in law, and he did; but he said, "I "can quite understand that you do not feel yourself "at liberty to interfere."

1803. (*Earl of Crawford.*) These marks would be for the same class?—Yes, for the same goods.

1804. (*Mr. Hutton.*) They are used in the same trade?—Yes.

1805. Was the case carried into court?—No; a great many marks are stopped in that way by attorneys' letters. Mr. Bailey did not make a complaint against us.

1806. Do you know the meaning of the words here round the border?—I do not know the Oriental characters myself, but I think there is a translation given behind. I think we have ascertained that it is the name of the firm.

1807. In his evidence, Mr. Bailey made rather a point of the name being put at the foot of the design in some cases?—Yes.

1808. The application for this was abandoned?—It was abandoned.

1809. (*Chairman.*) Have you got the Form F, which contains the English translation of the characters round the border?—I am afraid not, but I think I recollect ascertaining that they are not letters indicating the calling of the priest. I will ascertain that. I should like to show you a case here which, in deference to the opinions of the trade, and in deference to those recommendations, was carried into court early in 1883. This is the mark applied for (*producing the mark*). When I saw that mark I did not know so much what it was as I think I do now, but it was compared with all the semi-nude figures we had in the B list, and on the objection of various people, and on the representation of Mr. Fry, the Comptroller determined to refuse it. It is really a mark of Krishna or Baldero. I think it is Krishna, and the applicant obtained an order to register it. Among the marks cited against that is the Colossus at Rhodes. There were two ordinary nude figures in the B list.

1810. (*Mr. Hutton.*) Are *these* marks quoted

Mr. J. L. Whittle.

7 May 1887

against it?—There were also two B list marks—two bleacher's marks—of a semi-nude negro.

1811. This "Hercules" is registered?—Yes, the Hercules has been registered. That I mention as illustrating the difficulties the Comptroller is in by relying on the Manchester view, and this, of course, was a leading case. This case of Hoyles was a case of an old mark (*producing the mark*).

1812. (*Chairman.*) Of course, one may not be satisfied that the courts have as yet obtained that full information with reference to the customs of the trade and the effect in foreign countries which this Committee has had before it, and which is necessary to guide one to a proper conclusion?—Yes, that is well known, to a certain extent.

1813. (*Lord Macnaghten.*) Of course, it is a very different thing when you find two people who have been for some time using marks which are supposed to conflict, and when a person comes for the first time to register a mark?—Of course, my Lord, that is what I perceived in a number of the decisions, the wide difference between applications for injunctions and applications to register a new mark. In a series of cases decided by one of the ablest judges on the bench, who has now, I am sorry to say, left us, I think the tendency to look at a mark from the point of view which applied to injunctions clung to a great deal of his work.

1814. (*Chairman.*) It is a man's business to find out a distinctive mark; and it is not a distinctive mark if it is so like another mark as that it is calculated to deceive?—It would facilitate a good deal of our work if that doctrine was kept in view.

1815. The truth is, that the applicant, if he is an honest man really wishing for a distinctive mark, ought to be rather glad to be refused if any reasonable person could doubt whether his mark might not deceive, because he does not get that which it is his object to get if he is an honest man—a distinctive mark?—Yes.

1816. (*Mr. Hutton.*) Do you find that the majority of marks for which they apply for registration are so near that they are calculated to deceive?—No, certainly not the majority. I think the proportion of marks in conflict in the cotton classes is larger than in any other class, certainly.

1817. I see in the return for 1886, 1,514 marks were applied for and 545 were registered. That is a little over one-third?—That is as to cotton.

1818. Cotton piece goods?—Yes.

1819. (*Chairman.*) Would that mean that the other thousand were rejected?—A good many of those may be word marks, which are all standing over. A very large number are cotton marks, which have been kept over, awaiting light from this Commission. A good many are suspended.

1820. (*Mr. Hutton.*) I have worked it out, and since 1876 it comes to this, that 58 per cent. of the applications have been registered, and 42 refused?—I should say the proportion was very large in cotton marks that were without effect.

1821. Is it not the case that a considerable number of small firms keep on applying for marks which do so nearly resemble others as to be calculated to deceive?—I cannot say that they are especially small firms; they are not the great firms, I know, like Rallis' and others, but there are a large proportion of marks which are sent in by new names comparatively.

1822. But the large houses do not apply for registration at all?—I have heard that stated, but I cannot say.

1823. That was stated in evidence, I think, by Mr. Bailey, that they never apply themselves for registration now?—We have a great many houses, but I cannot say to what extent,—a large number. I heard it mentioned the other day that John Orr Ewing does not apply for registration at all. The applicant for a mark which was accepted wrote to know what he was to do, because John Orr Ewing threatened him with proceedings for infringing a mark, which he said he had used, but never registered, and did not intend to register.

1824. Would not it remove this friction and simplify matters very much indeed at the Board of Trade if a certain amount of decision were given on the spot by persons practically acquainted with the trade?—It would certainly relieve the Patent Office, and I fancy the Board of Trade, of a great deal of work, but how far it would bring about a settlement of the question I am doubtful.

1825. I think you mentioned that in those 44,000 marks which were examined and decided upon by the committee of experts, a very large number of them were appealed against?—600, I think.

1826. The evidence put before us, I think, made it 170 cases only?—I have just got out a return, and I make it 634 as being the actual number of marks dealt with under orders of the court out of the B list.

1827. There were appeals to that number?—Yes, cases that had been dealt with by order of the court. I may mention that as regards that B list there is some misapprehension, I think, as to it. For instance, the 34 volumes of words could be readily reduced to 8 or 10 volumes. There are hundreds of pages with simple words like Madapolam, and nothing else. That is the name of a kind of cloth—a common trade term for India goods.

1828. But those are not registered?—They are in the B list. There are a hundred or two with the word "Manchester" simply, and others with "soft," "stout," "strong," "superfine," simply printed in various types, which would not be recognised anywhere as marks.

1829. (*Chairman.*) The entries in the B list merely mean that they are marks or words in common use in the trade, and which no one thereafter ought to be allowed to register. Is not that the only meaning of the B list?—Yes, but they do not represent actual marks, the great majority of them, so that I fancy the actual number of marks that would have any existence as marks might be reduced to 18,000 or 20,000, especially with the exception of headings. They would be different, of course.

The witness withdrew.

Mr. F. W. Grafton.

Mr. Frederick William Grafton called in and examined.

1830. (*Chairman.*) You are a member of the firm of Grafton and Company, calico printers at Manchester?—Yes.

1831. There are certain points in relation to the Trade Marks portion of the Patents, &c. Act to which you desire to direct our attention?—Well, more particularly referring to the Registration of Designs.

1832. You are interested more particularly in that part of the Act which has reference to designs?—Entirely so.

1833. Will you be good enough to inform the Committee what part of the registration of designs provisions you invite attention to?—The chief points that we wish to call attention to we have already submitted to your Lordship in a memorandum which was sent up a week or two ago, I believe. But, however, very briefly, we want the Act to apply as the old Act did to the merchant who fraudulently copies our patterns as well as to the printer who produces them.

1834. That the penalties imposed should as much apply to the person who gives the order as to the person who executes it?—Precisely.

1835. And indeed, that he should be the person who, if the printer has done it innocently, primarily shall be made liable?—Yes; in fact that they should both come under the operation of the Act, as I believe was the case under the old Act. The merchant who frequently supplies the designs which calico printers produce is really the worst offender, because he copies our patterns or any other patterns, and says nothing about it; causes it to be supposed that they have come from abroad, and the calico printer may really be innocent in that case. I might also remark that there

are many cases (I dare say Mr. Hutton knows something about that too), in which copies are made by merchants trading to different markets—perhaps trading to India, and so on—and there the quantities are so large that the printer will copy them and then destroy the pattern, so that we do not know until they come into competition in the market abroad that anything of the kind has occurred. In that case the merchant certainly ought to be held liable.

1836. (*Mr. Hutton.*) That is under clause 58, I think. It says anybody "who shall apply." You want to insert "or cause to be applied"?—Yes, "or cause to be applied," or any other suitable words, of course.

1837. That is a common practice, is it not, at the present time?—Yes, it is so understood, and it is a common practice that the merchant supplies the patterns and induces the printer to copy them, as we find to our cost incessantly.

1838. (*Chairman.*) The merchant gets the pattern sometimes, I suppose, from abroad; he is told that it is likely to be a good thing, and that he will get orders for it, and then upon that he gives an order to a printer?—Yes.

1839. (*Lord Macnaghten.*) Then he would know nothing of it until it comes into competition in the market?—No.

1840. Have you or your firm taken proceedings against printers in any case?—Under this present Act?

1841. Yes?—Yes, several times. I may refer to Lord Herschell to answer that question.

1842. (*Chairman.*) What you are referring to, I think, was not under this Act. You sought to obtain an injunction there, I think?—Yes, precisely.

1843. (*Lord Macnaghten.*) I am asking you whether you have proceeded for penalties under this Act?—We have not taken proceedings against any merchant.

1844. (*Chairman.*) Have you brought an action for penalties as distinct from asking for an injunction to stop it?—Yes, we have several times, but I do not think that, except in one case referred to, the cases came into court, because they were settled between the lawyers. We have recovered penalties on two or three occasions within the last year or two.

1845. (*Mr. Hutton.*) Without going into court?—Without going into court.

1846. Have you exacted the penalty which is named here, 50*l.* for every offence?—That is one of the points we wish to submit, that that clause wants more clearly defining. It seems to be very difficult to decide (and that is the opinion of the lawyers in Manchester also) whether that applies to every separate piece printed or to every separate order, or what it does apply to, in fact.

1847. (*Chairman.*) What would you suggest it should apply to, supposing we amend the section. Every order would hardly be sufficient if the penalty remains at the present rate, because you might have a big order on which the profit would far exceed the penalty?—Yes.

1848. Then every piece you see might bring it up to too great a penalty?—It is possible that it might be, but then the question is, is it too great a penalty when people are doing wrong? That is one of the views that is taken in Manchester. I do not know whether you have had any witnesses on that before.

1849. (*Lord Macnaghten.*) Somebody suggested 100*l.* instead of 50*l.* Do you think that would answer all purposes?—I think that is a very suitable amount, in fact, I remember, I was a member of the House of Commons committee myself on the Act in question, and I moved that the penalty should be 100*l.*, but it was overruled. Some thought it was too large. Of course 50*l.* for each piece would be too much; that would be ruinous to everybody. But the question is whether there should be a smaller penalty on each piece with perhaps a minimum amount altogether.

1850. (*Mr. Hutton.*) Could you fix the amount per piece?—Well, I think it wants a little consideration before I could give an absolute amount. If you take the ordinary length of goods per piece (25 yards) and put 3*s.* or 4*s.* on each of those, if there was a large order it would come up to the amount of the penalty.

1851. (*Lord Macnaghten.*) You would get into some difficulty in that respect, because it would not be very easy to ascertain how many pieces had been printed. You would have to give the court some means of discovering how many pieces had been printed. I think the simple penalty is better?—I am not prepared to urge the other, but there should be some definition.

1852. Do you think 50*l.* too much?—I think that 100*l.* is not too great a penalty on each transaction, although it would be on each piece.

1853. (*Chairman.*) 50*l.* for a whole order?—50*l.* for a whole order. But then the question is, is it to apply to each separate order. We had a case lately, within the last two or three months, in which there were four or five different orders given for one of our patterns by different Eastern merchants, some more or less important. There were four or five distinct orders all from patterns which were copied from us within the last six months.

1854. (*Mr. Hutton.*) So that even this 100*l.* penalty would not meet that case if it were 4,000 or 5,000 pieces at 1*l.* each?—They were not orders of that magnitude, and if there were 4,000 or 5,000 pieces it would be probably confined to the operation of one merchant. These were smaller men who had grouped them together.

1855. You mentioned just now that an order might come for 10,000 pieces?—No, I did not mention that, I said a large order might come, and we have reason to believe that they do come from India, and distant markets, because we never know anything about it until it comes into competition. If the order is sufficiently large for the printer to produce the pattern it is no guide in the meantime. They are not put on the open market.

1856. (*Chairman.*) Would it be enough to increase the 50*l.* to 100*l.*, leaving the offence still open to vagueness? It was rather suggested, I think, by Mr. Nevill, in his evidence, that there would be advantage in leaving it vague, as it is at present—it might inspire more fear by not defining the offence too narrowly, but merely raising the penalty. What should you say to that?—I have no objection to the penalty being raised; on the contrary, I should encourage it; but I think that the question of liability wants defining, because that we find is a stumbling block with the lawyers in Manchester. They say we do not know what the meaning of the Act is, in fact.

1857. (*Chairman.*) The offence is applying the design for the purposes of sale to any article of manufacture or to any substance, and the question in doubt is, as I understand, whether that is a separate offence in the case of each application to each article?—Yes. In our trade our goods are sold by what is called the piece.

1858. (*Mr. Hutton.*) You stamp every piece "Registered design"?—Yes, "Registered design." That is very general.

1859. You are obliged to do it according to the Act?—Yes, of course we have to conform to the Act. Each piece varies, as you know, in length, very much.

1860. (*Chairman.*) Are the pieces made separately, or are they cut up after they are made?—No; there is what is supposed to be a standard length in the trade, and that measurement was 25 yards in the grey piece, but there is a practice now of selling them in "lumps," as it is called, that is to say, putting three or four pieces together. We should call it in the trade, and do call it, so many pieces.

1861. If a "lump" comes to you, it comes not cut up into pieces, but it is 75 yards instead of 25 yards?—Exactly, or 100, as the case may be.

1862. My impression, off-hand, would be that if it came to you as a piece, that there was an offence in respect of applying the design to each piece; if it came to you as a lump or lumps the offence would be in applying it to each lump?—Yes. Then the point

Mr. F. W. Grafton.

7 May 1887.

in question is, should the penalty apply to each piece, whether it be a lump or a shorter piece, or to each lot delivered, or to each order—to each transaction. That is what seems to be the doubtful point.

1863. (*Lord Macnaghten.*) The offence seems to be the application of the design to an article?—Yes.

1864. I suppose a lump is only one article although it is stamped several times?—Quite true.

1865. (*Chairman.*) A lump is dealt with exactly in the same way as the piece; the design is put on in the same way?—Yes, exactly so. It is only a matter of convenience.

1866. It is only a long piece?—It is only a long piece, or rather three or four pieces put together.

1867. Supposing that the section does apply to the application to each piece, using piece in its ordinary sense—not in the Manchester sense of piece, which would include therefore a piece or a lump—then I suppose you would think the 50*l.* was enough for each offence?—If it applied to each piece?

1868. Yes?—But you do not mean that the penalty should be upon each piece produced, do you?

1869. Well, the question is rather what you would desire as being sufficient to secure the object of the Act. It strikes me that there is a considerable difficulty in fixing a sum in relation to an order, because the order may be a very small one or a very big one?—Quite true.

1870. Whereas, after all, if a piece is dealt with, although it may be a shorter piece or a longer piece, still it has practically some sort of limit. Would it be better to make it a small penalty and in terms to apply it to each separate piece of goods to which the design was applied?—Well, that is a question about which I feel some doubt, I confess, whether it should apply to each piece. If it did there ought to be a minimum amount which should not be less than whatever it may be, either 50*l.* or a 100*l.*

1871. How would it do to give an alternative to the aggrieved person, that it should be a penalty not exceeding so much per piece, or not exceeding so much in respect of the order, and leaving a person who sued to choose for which of those penalties he would proceed. Do you think that would do?—That is to have it optional whether it should be levied on the piece.

1872. Yes, whether it should be 5*l.* a piece or 100*l.* for the order,—leaving it optional to the person aggrieved to say which of those penalties he would have?—I should say in that case I would rather have it 50*l.* or 100*l.* on the transaction—on the order.

1873. What I am suggesting is putting both in and leaving the option to you. For example, if you were the persons aggrieved, which you would sue for?—I see what you mean.

1874. (*Lord Macnaghten.*) Has there been any legal decision on this section?—No, I am not aware there has been, but that is what our lawyers in Manchester tell us, that there is a doubt about the construction of the sentence.

1875. (*Mr. Hutton.*) How have you settled in those cases you have had which have not gone into court?—Well, I think in one case we had 100*l.*, and in another 50*l.*, as compensation to us.

1876. Covering the whole transaction?—On the transaction, and the patterns were turned off; that is to say, the rollers were destroyed, and the goods given up. I may remark that all such goods are of a very inferior character to those we produce, and are sold at lower prices in competition with ours in distant markets. That is the object of it in fact. Therefore it was our object to get them out of the market as well as to fine them. They have been compromised, in fact.

1877. (*Chairman.*) Is there any other point you wish to bring to our notice?—I may just be permitted to say that such people as I have now been alluding to think that the operation of the Act is too severe, and I dare say you will hear that those who are supposed to be most wealthy can override these people, but then we are only trying to suppress what is absolutely wrong. It is the people who complain about it who are the people who are really the scourge of the trade. They are nothing more nor less than robbers in their way. We go to a very great expense in the production of these things, and not only in the production of designs, but in the application of chemical appliances of all sorts, and then they take not only our patterns or designs, but our colourings and arrangements generally, so that we are not disposed to suggest any more lenient view of the Act than now exists. Do I understand that the remark you made was that the copying of each piece would be an infringement of the Act?

1878. Well of course, it will not do to express an opinion extra-judicially, but my opinion is at present that the offence being applying the design for purposes of sale to any article of manufacture, that when that design is applied to a single piece it has been applied to an article of manufacture, and that when it is applied to another piece, it is applied not to the same but to another article of manufacture, and that each application to a thing, that is, a separate distinct independent thing, like a piece or a lump, as the case may be, is an applying the design to an article of manufacture within the words of the section; but that of course is a question that may hereafter come before the courts. I only state my opinion for what it is worth?—The application of the pattern to any piece of whatever length is a fraudulent transaction, and constitutes an act which brings it under the operation of the section as to penalties.

1879. (*Mr Hutton.*) I think there was some other point which you have not alluded to, about marking each piece with the word "registered"?—Yes.

1880. (*Chairman.*) Supposing a registered design is applied to a number of pieces of goods, you put only "registered" on one part of each piece—the end of each piece?—Yes.

1881. That goes out into the market and somebody sees that design. The piece that he gets has no word "registered" upon it at all. He cannot get any inspection of the register of designs to see whether it is registered or not. In that case would there not seem to be a difficulty in holding him liable to a large penalty for ordering, or the manufacturer for making, a copy of that which he had no means of knowing was a registered design?—I must confess I am not quite clear about that, but I think that he can get information, after a certain time, from the office.

1882. (*Lord Macnaghten.*) No, only if he seeks to register himself. Suppose an honest printer has sent to him a design, and he is asked to copy it; what is he to do? Suppose that the piece which is sent to him does not bear upon it the word "registered," or anything to show whose property it is. What is the printer under those circumstances to do?—Well, he must make thorough inquiry in every way to satisfy himself that it is an original.

1883. What sort of inquiry, and of whom would you suggest that he ought to make it, because if he goes to the office he gets no information?—Well, in the first place, the great majority of these things that are copied, are copied from printed bits. They are not copied from designs generally; they are sometimes.

1884. (*Chairman.*) What Lord Macnaghten is asking is, supposing a printed bit is sent to him,—supposing it is half a piece, and it is not the tail end, and it has not got "registered" on it. There is nothing to show him whether it is registered, and he cannot ascertain at the office?—But he knows it is not his own property, and he knows that any printed bits which may be put before him, and which he is asked to copy, must be for some fraudulent purpose.

1885. (*Lord Macnaghten.*) It may be public property?—I have had plenty of cases of the same kind. People continually bring things of that kind to us, and we say that we never copy any patterns whether they are English or French, or whatever they may be. He may say "It is one 50 years old;" and then we should satisfy ourselves that he was telling the truth in every way.

1886. (*Chairman.*) Would not that rather point to

this, that even if you do not allow inspection as of right of the register of designs, a person ought to be allowed on paying a fee to get the information whether any design has been registered already?—I think that is a point that may be worthy of consideration, certainly.

1887. (*Lord Macnaghten.*) Then all the printer would have to do would be to send to the office and say, is it registered or not?—Yes, I think that is so.

1888. (*Chairman.*) Some witnesses have advocated designs being open for inspection, and others have said that if they were open for inspection it would lead to people seeing how near they could go with a new design?—Yes, that is a very proper objection too, because there are cases of that kind. We have had one lately, in which the printer who had copied our patterns admitted that he had sailed as close to the wind as he dared, that he dared not copy the thing absolutely, but he imitated it as closely as he could.

1889. There would not be, of course, that objection to allowing, on payment of a fee, the information to be given by the office whether a particular design is registered or not?—Supposing that the designs were brought to the Registrar, and the inquiry made, "Is this a registered design?" I see no objection to that on the face of it at all.

1890. Because that would get rid of the difficulty under which it seems to me the printer, and even a merchant, may now labour, of not being able to ascertain, however honest may be his intentions, whether he is breaking the law or not. He ought surely to be able to take some means of knowing whether the design he is asked to print is or is not registered?—On the face of it, I do not see any objection to that at all, but I do see a great objection to their being allowed to go and inspect promiscuously all the designs in the office.

1891. (*Mr. Hutton.*) How long have you found it takes for a new design to become known in the foreign market, because four years is what is limited by the Act?—Well, that varies very much. Under ordinary circumstances I should say that all that is necessary to know about their value would be known within a twelvemonth: but then in many markets, for instance, India, really they do not get circulated, and their value would not get known in less than a year or two, and you must have ample protection on that ground.

1892. Do you think four years a sufficiently long protection for a design?—I should prefer five myself, but I believe that was a point which was urged also in the Committee. The other was a sort of compromise, I believe.

1893. There has been a good deal of discussion as to what is a new or original design, and as to what constitutes originality?—Well, of course, that is always a difficult question.

1894. Is it possible to define it?—Some people, for instance, would say that many of them are copied from silks and other forms of printed goods, but it is a difficult thing to know what is original, I dare say.

1895. The terms are, "not previously published in the United Kingdom." A pattern of silk published in the United Kingdom would not be an original design?—Not as far as the design is concerned.

1896. Not if it has been offered for sale?—Well, if anyone takes a form that has been, in silk or any other material, in actual use, it cannot be original.

1897. (*Chairman.*) If a merchant gave you an order to print a particular design, you would not consider that authorised you to register the design as yours, would you?—Well, that would depend on our arrangement with the merchant.

1898. Except by arrangement with him you would have no right to register because you printed a design for him?—No, that would be so. It would be his design, I presume. A merchant might come and say, "This is my special design, which I think a great deal "of, and you must register it on my behalf, and not "sell it to anybody else."

1899. Here is a case which is put before us from the Chamber of Commerce at the request of a number of calico printers in Manchester. "Merchant A re- "ceived from abroad a pattern of native woven silk, "which he handed to printer No. 1 to be reproduced "as print. This was accordingly done, and the "printed pattern registered by printer No. 1." You would understand that to be done by arrangement with the merchant, I suppose?—Yes.

1900. "Then merchant B received another piece of "the same native silk, which he handed to printer "No. 2, who dealt with it in the same way as printer "No. 1," that is, used it as a print. "Does the fact "that printer No. 1 had the pattern registered first "entitle him to prevent printer No. 2 from printing "or issuing his pattern? This case is at present "under consideration; and similar cases are of fre- "quent occurrence." I am not quite sure that I understand what the difficulty is. Is the question whether there was any right to register that pattern under the Designs Act, for the purpose of calico printing, because it was a copy of the pattern of a piece of silk received from abroad?—It appears to me, in that case, that the two merchants have got the same article, and both are copying it, and that the query is, to whom does it belong?

1901. (*Lord Macnaghten.*) In one sense, neither is "new or original"?—No, it is *not* original, and, therefore, I should think it is very doubtful whether they could register it.

1902. (*Chairman.*) The section is, "claiming to be "the proprietor of any new or original design not "previously published in the United Kingdom," so that it might be new and original if it came from abroad and was unknown here?—Yes.

1903. Then the question would arise as to who was the proprietor. Of course, if it is a design which has been hitherto only known abroad, it is not a design which has been published in the United Kingdom, and therefore in that sense it is new or original apparently?—Yes.

1904. Then the question arises as to the person claiming to be the proprietor; who do you think, apart from what is the construction of the sentence, ought to be considered the proprietor—the first person who in this country applies for its registration?—Well it is very difficult to say. On the face of it you would say so, but, I think, if the same article was produced by another man and treated in the same way, which is a very unlikely thing, it ought to invalidate it altogether. It is rather a difficult question certainly.

1905. I think it might be an advantage if the gentlemen who have been good enough to suggest this question would tell us, not what is the law, but what they think ought to be the law in such a case?—Yes.

1906. (*Lord Macnaghten.*) Is it a common thing to have patterns sent from abroad as suggested in that letter?—Yes; it is not at all an unusual thing to have, for instance, from Eastern markets patterns of silk that they produce for superior purposes, sent to be imitated, but it would be a very unlikely thing that the same thing would be applied in the same way by two or three different printers. The question always of the treatment and the colouring has so much to do with it. May I ask whether, if any course should occur to us that would meet the difficulties about this second point as to the application of the penalty, your Lordships will allow us to submit them to you?

1907. (*Chairman.*) Certainly?—It certainly does want clearing up a little, but as to whether it should apply to each piece, or to the lots, or to each separate order, I was just thinking of the case in which four or five merchants have bought in distinct orders, and distinct lots, some goods copied from us, we will say by a printer, and whether, supposing that the Act was altered so as to include the merchants as well as the printer, we should be able to attack each of them.

1908. Is there any other point you wish to mention?—No, I am not aware that there is. Those are the two points which seem to us to want clearing up.

The witness withdrew.

Adjourned to Wednesday next at the House of Commons at 11 o'clock.

No. 17 Committee Room, House of Commons.

Wednesday, May 11th, 1887.

PRESENT:

LORD HERSCHELL.	LORD MACNAGHTEN.
EARL OF CRAWFORD.	BARON DE WORMS.

LORD HERSCHELL IN THE CHAIR.

Mr. J. Imray.

11 May 1887.

Mr. JOHN IMRAY called in and examined.

1909. (*Chairman.*) You were formerly President of the Institute of Patent Agents?—Yes.

1910. You desire on behalf of the committee of that institute, who have considered the question of the trade marks portion of the Act of 1883, to give us certain evidence with regard to the working of the Act?—Yes. The council of the institute appointed three of us—Mr. Clark, Mr. Justice, and myself—as a deputation to attend upon your Lordship and the Committee, so as to give any explanations that might be thought necessary as to the report of our committee upon the subject. I should premise, however, that this report of the committee has not yet been before our institute as a body, it has only been before the council, and therefore we do not put it before you as the unanimous feeling of the whole institute, but only as what the council, upon the whole, think it advisable to recommend. The great point we have had under consideration is this. At present the Patent Office, in respect to trade marks, exercises two different sets of functions; one set of functions may be called the formal functions, to see that applications are put in in the proper form, and to see that the register is kept, and all that sort of thing, which I think they can very properly perform; the other set of functions is what I should call judicial, and I very much doubt whether they are in a condition to perform those functions well. For instance, they have to decide whether a trade mark is within the statute, and if it is the sort of thing that the statute allows. Now, when we consider that judges and justices of appeal have not been able to agree upon that, I think it is not at all likely that clerks in the office would be able to agree upon such subjects. The other set of judicial functions is in cases of opposition, to determine whether a trade mark shall be granted or not. Unfortunately the proceeding in this matter is an extremely roundabout and clumsy one. It is this, that if the Comptroller decides against the trade mark, the appeal is not to a separate and independent body, but to the Board of Trade, and it must be remembered the Comptroller is one of the officers of the Board of Trade. He follows their rules, and no doubt they adhere to him. What I should like very much to see would be the same thing in trade marks as we have in patents—an appeal from the Comptroller to, say, the law officers, I think would be more satisfactory, because even if we appeal to the Board of Trade, they throw the thing into the courts, and that brings about an extremely expensive, very troublesome, and very dilatory proceeding altogether. Therefore, I think that much might be done to save the office the trouble of a great deal of judicial duty, and help it more in its formal duty. One sterling point with regard to that is this: in granting patents, the patent is granted to the applicant at the applicant's own risk. He takes the risk as to novelty, he takes the risk as to utility, and as to everything else necessary to make a good patent. It is not so with trade marks. The office takes upon itself to judge whether the trade mark is sound or not. Now, why should this be so? Why should it not be left to the applicant to take it at his own risk?

1911. Is not one reason that in the case of patents though many people have advocated that the office should determine whether the patent was one which ought to be granted or not; it is a matter of very great difficulty, whilst in the case of trade marks it is, at least, of less difficulty because the points that have to be considered are not nearly as complicated or as diverse?—That may be so. If so, I think that is a strong reason why it should be left to the applicant himself, because he could more easily decide on the soundness of his own application, without having to go through the office. I may tell you that this is a cause of serious loss. A man brings out some new sort of goods. He wishes for a trade mark to mark these goods; he applies to the office for a trade mark. The thing is delayed three, six, nine, and sometimes twelve months before he gets it. The market is gone, the whole thing is lost to him. We have constant complaints of the delay. What we wish to see is that the office should be relieved of a great deal of this work, which we think might be better performed otherwise.

1912. I quite understand your argument with reference to the appeal to the law officers, or a direct appeal to the court, rather than going to the Board of Trade. Of the two, you would prefer the law officers?—I think so, so as to assimilate the trade mark practice as much as possible to the patent practice.

1913. Apart from that, if every trade mark were registered, would not the register be crowded with trade marks that really were not legitimate?—I do not know that it would be, any more than the register is crowded with patents that are frivolous. I do not know that it does much harm.

1914. Of the frivolous applications a vast number never proceed to patents?—That is quite true.

1915. Whereas, with the trade marks the fee is so small that almost everybody proceeds to a trade mark, or would, if your plan were adopted?—I do not know that that would do much injury to have so many trade marks. Of course, it would require this to be done: that a very good register of trade marks should be kept and published, with proper indexes, as with respect to patents, so that applicants might go and search for themselves and see whether the thing was new or not—whether they could have a good trade mark or not.

1916. Would it not diminish a good deal the value of trade marks?—I think not. The value of a trade mark really is this: it becomes associated with certain goods, or the goods of a certain maker, and that really is the value of it—nothing else.

1917. Then somebody would at once register something not identical, but very near it, and it would equally be a registered trade mark, and could only be got rid of by legal proceedings?—By legal proceedings, as in the case of a patent. When a man takes a patent which is very near somebody else's, and manufactures according to that patent, it can only be settled by legal proceedings. I do not see why the system should not hold with trade marks as well as with patents. Of course it is for your consideration. Our view is rather to simplify proceedings in the

Patent Office, and thereby to avoid the great delay and trouble which now attends the granting of trade marks, so serious that really the value of trade marks often is entirely destroyed in consequence of the delay. Then there is another point which, I think, requires attention. When the case goes before the Board of Trade, and then goes to the courts, the opponent is required to find a security for 200*l*. There is no such thing in a patent case, except the man is a foreigner, and cannot be got hold of. Why should it be so in this case? It is a very serious thing to have to find security.

1918. A suggestion has been made to us with regard to the former point, that the present appeal to the Board of Trade would be very much less open to objection if this practice were pursued: that when the Board of Trade looked into the matter, if they differed from the Comptroller, they should deal with it themselves; but if they agreed with the Comptroller, that there should be no hearing before them, but they should refer the matter as of course at once to the courts. What should you say to that?—No doubt that would be a little simplification, but I do not think nearly enough. Might I be permitted just to call your attention to the resolutions which our committee adopted? They give in a compendious form the views I have been endeavouring to illustrate. At the end of this report, I think, your Lordship will find it. The first is: "That the trade marks office,"—leaving out designs for the present,—"shall be merely a registration "office for the reception of applications, which shall "only be examined as to their being prepared in "proper form." That is in order to avoid entering into the question as to whether the mark is within the definitions of the statute, and as to whether it is novel or not. To leave that question out, that they should merely register the applications as they do with regard to patents. "(2.) That all applications shall be "allowed, and placed on the register at the applicant's own risk, subject to their having passed "through an opposition stage;" that they should be properly advertised as with respect to patents, so that there is ample opportunity given for opposition in the usual way with patents. "(3.) That the procedure "for opposition to a trade mark be simplified; such "procedure to be assimulated to that of opposition to "patents, namely, opposition to the registration of a "trade mark to be decided by the Comptroller, subject "to an appeal to the law officer." That is again with a view of assimilating the trade mark procedure to the patent procedure as much as possible. "(4.) "That the classification of goods be re-arranged and "enlarged; that is to say, the number of classes be "increased." We have every-day instances in which we do not find a class that exactly suits the goods, or the new sort of goods that have to have their mark, and therefore it is necessary to sub-divide the classes, in order that you may distinguish one from the other. That we find every day to be necessary.

1919. You want a further sub-division?—Yes. "(5.) That a more explicit definition should be given "of clause *c*. of sub-section 1 of section 64 of the "Act of 1883. There has been a great discussion about that section before the courts, as your Lordship is aware. Some judges have given their views one way and the justices of appeal have given their views another way. So that at the present moment one scarcely knows what the statute means. We propose to use the same words in the clause, with a little addition to it. "A distinctive device, mark, brand, "heading, label, ticket, or an arbitrarily selected "word, letter, symbol, or figure, or a combination of "any or all of the same which shall neither be "descriptive of its place of manufacture nor deceptive." There has been, of course, as your Lordship knows, a great deal of objection taken to using names of places for trade marks; for instance, the word "Melrose." One strong reason for that is, no doubt, this, that if two people are manufacturing at the same place they will both equitably be entitled to use the same word.

Mr. J. Imray.

11 May 1887.

1920. Would it be enough to say that it shall not be descriptive as to its place of manufacture, because if it is geographical it might take a place of manufacture of that article though not the place where a particular person carried on business?—My own feeling is that there should be no geographical mark allowed at all; that is my opinion; I do not say it is the opinion of all of us.

1921. I suppose you would not object to geographical words which could not be the place of manufacture. For instance, if you took the name of the mountain Ben Nevis or Ben Lomond?—Or Timbuctoo, or something of that kind; so far out of the way that it could not possibly be mistaken as a place of manufacture. That would answer the purpose.

1922. Whatever words be used you mean you would use no word which could be understood as descriptive of the place of manufacture?—Yes.

1923. (*Lord Macnaghten.*) The only difference that I see between that definition and the one we have before us is that you use the expression "arbitrarily selected" instead of "fancy"?—Yes, and add these words at the end.

1924. Those words "neither descriptive nor deceptive" are understood to apply, as I understand the law, to all these expressions?—Yes; but at present there has been a great discussion as to whether a geographical word could be used at all. One court gave it in favour and another court gave it against, so that it is a very serious difficulty at present.

1925. Then your definition really amounts to substituting the words "arbitrarily selected" instead of "fancy," and excluding all the geographical terms?—Yes, and anything that is likely to deceive.

1926. That is excluded already, as I understand it?—I think, in the proper understanding of the statute, that should be so.

1927. (*Baron Henry de Worms.*) The actual place of origin could not be registered as a trade mark?—It should not be.

1928. It cannot, can it?—I do not know that the law is against it.

1929. Take the case of knives—take Sheffield?—There was the case of the Glenfield starch, as to which there was considerable litigation at one time. The starch got high reputation as "Glenfield" starch, and then some firm started a manufactory at Glenfield afterwards and claimed the right of calling their starch Glenfield starch. There was a great deal of litigation about that.

1930. (*Earl of Crawford.*) That would be on another point. There would be a previous occupation of the name?—Yes.

1931. If the man had originally started that at Glenfield would he have been refused in the same manner, do you think?—I think he ought to have been refused the name, because he would have no right to usurp for himself Glenfield as a place that nobody else could use.

1932. (*Chairman.*) Might there not be a difference in this case. Suppose the geographical name were all of it exclusively the property of the person registering. There have been cases of that kind—a man registering the name of his own place—of his own property?—His own estate.

1933. Yes; should you see no objection to that?—The estate might fall into other hands. There might be a difficulty there.

1934. (*Baron Henry de Worms.*) You know that the word "Balbriggan" is largely used for hose?—Yes.

1935. That, of course is a geographical description of a place?—I think you will find that is not used as a trade mark for one firm, or one individual. It is the general description of the goods that are made at Balbriggan.

1936. That is exactly what it is not. Stockings not made at Balbriggan, but made at Kemlitz, in Saxony, or at Nottingham, are called Balbriggan hose, Balbriggan being a geographical description?—That is, no doubt, because they resemble in character

Mr. J. Imray.

11 May 1887.

the manufactures of Balbriggan, or that is the intention.

1937. In the case of hose made at Balbriggan that is the actual place of origin?—Yes.

1938. Would you allow the word "Balbriggan" designating those not made Balbriggan to be used as a geographical place of origin?—No, because that is clearly deceptive.

1939. You are in favour of excluding that entirely?—Certainly.

1940. And, therefore, Balbriggan hose,—that is to say, of a quality usually made at Balbriggan—should be designated by some other name not geographical?—Yes, I believe it would save a good deal of confusion if that were so. Then there is a very important question No. 6 of our resolutions, "That a subject-"matter index of fancy words and devices, such as "animals, plants, symbols, &c. be prepared and "published, for the use of applicants." Of course, it would be essential, if you leave it to applicants to take trade marks at their own risk, that they should have a good index to appeal to. Finally "that the "certificates of registration of trade marks issued "by the office have printed on them, or attached "thereto, a representation of the mark, and full "particulars of its registration." Now, we wish to assimilate that as much as possible to the American system. The Americans give out a certificate of registration which exactly resembles their patent. *This* is one of the American trade marks, and *this* is the certificate of registration (*producing the same*). It contains on the face of it the mark itself. I am sorry I was not able to get one with a design on it. It is the same sort of thing. It shows the design and the description of the design. We think every trade mark when registered should have a certificate like that given out by the office. Mr. Clark and Mr. Justice, who are both members of our council, are here ready to give any further explanations your Lordships may desire. Mr. Justice especially can tell you a good deal about the American system, because he is connected a good deal with the American Patent Office.

Mr. P. M. Justice.

Mr. PHILIP MIDDLETON JUSTICE called in and examined.

1941. (*Chairman.*) Can you tell us whether in America colour forms a part of the trade mark, or whether, as here, having registered your trade mark, you are entitled to it in any colours?—The colour is frequently mentioned in the trade mark application. The practice is different. If you file your label exactly as you use it, in colour, containing a trade mark, you must furnish the office with a dozen copies of that label. I am speaking of the United States. If you do not file in any colour you furnish a drawing exactly similar to a patent drawing on Bristol board, of course, in Indian ink. That is reproduced by photo-lithography, as in the certificate you have. The question then would remain with the specification. If you specify in your specification describing your mark that you usually print it in blue and red, that would be in accordance with the usual practice. "We usually "print our mark in blue and red, but this is not "essential, as the main features of our mark consists "of the arbitrarily selected symbols KKL."

1942. So that, practically speaking, the colour is not there, any more than here, part of the registration?—Not at all.

1943. The fee for registration of a trade mark is much larger in the United States than in England?—Yes, it is 5*l.* for 30 years. Here our marks are only registered, as you are aware, for 14 years. The American marks are all limited by prior registration abroad, as they come under treaty. If you will permit me I should like to raise one or two points which were not dealt with by Mr. Imray. In the first place, I am afraid, from what I heard Mr. Imray say, that his words might convey the impression that it was in opposition cases that you appeal from the Comptroller to the Board of Trade. That is not so here. In the case of opposition you are required to give a bond, and you go by order of the Comptroller directly to the court.

1944. It is in the case of refusal?—In the case of refusal, in which you appeal from the Comptroller practically to the Board of Trade, who have given the Comptroller instructions not to accept this class of words, so that we are practically appealing from the Comptroller to the Comptroller sitting as the Board of Trade. Another point which I should like to bring before you is the present practice, or lack of practice, of the office. I fear that, while I quite agree with the proposed amendment of the law, it might be some time before we are able to secure that through your good offices, but the present practice of the office might certainly be improved. I have here a list of words accepted by the office as new marks, fancy words, since the 1st January of this year down to the 27th April, nearly all subsequent to the decision in the "Electric" case in the Court of Appeal, and many of them are, in my opinion, not capable of registration as fancy words.

1945. You mean consistently with the decision in the "Electric" case in the Court of Appeal?—Yes. That is not the particular point. But these words have been passed by the examiners in the Trade Marks Office without a hearing by the Comptroller. I mean no objection has been entered by the examiner; and the result is that the marks have been accepted, and advertised in the usual way. These marks are constantly brought before us by clients, who say, "Can we register such and such a fancy word?" I say, "No, in view of the 'Electric' decision, you cannot;" but they say, "Look at the Trade Marks Journal. Look at what has been accepted." You see that is no criterion at all. They will not accept, in the Trade Marks Office, their precedents. I had a case yesterday, a hearing before the Comptroller, in an application for the fancy phrase, or the arbitrarily selected phrase, "Rough on." It is used on "Rough preparations," "Rough on Rats," "Rough on cockroaches," &c. It is "Rough on," as a fancy word applied to various preparations. "Rough on Dirt," as applied to soap powder, was the particular case in point. The Comptroller at once held at the hearing that it was not a fancy word. I called his attention to the fact that on the 27th of April he had accepted the "World Wide Boot" for boots and shoes; that he had accepted the "Carver's Friend" for knives and cutlery and plated goods; and the "Housewife's Friend" for candles and soap; and also the "Housekeeper's Friend" for candles and soap. I also called his attention to the fact that shortly before those marks were advertised—it was in February of this year—he had absolutely refused to register the "Cook's Best Friend" as a trade mark for baking powder. It is the practice of the office, of course, when the marks come before the Comptroller at a hearing, for him to decide what has been the construction given to fancy words by the Court of Appeal, and he refuses many of them, and very properly. But the majority of the examiners in the office do not act on the same decisions. The result is that we get a most uneven practice in the office; and when these precedents are produced, the Comptroller says, perfectly frankly: "Well, Mr. Justice, I think it is certainly wrong that this should have been accepted." For instance, here is the word "Famous" accepted for soap, and "Priceless" for perfumed soap. There are any number of words or phrases accepted which are certainly descriptive. Here is one that is descriptive—"Peacock," for laundry blue. The words "Bass's Soap" are accepted for candles. That certainly must be deceptive. "Schweppe's Seltzer Water" is accepted for ginger beer. Now, can you accept "Schweppe's Seltzer Water" for ginger beer? It

takes in the whole class—ginger beer, soda water, and aërated waters.

1946. It is registered for a class which includes soda water and ginger beer?—Yes, but they accept it for the whole class.

1947. (*Baron Henry de Worms.*) Would not it come under sub-section *b*, a signature, or copy of a written signature of an individual?—These are words; it is not a copy of a signature.

1948. The words "Schweppe's Seltzer Water" would not be registered as a trade mark for ginger beer?—It has been accepted. I am taking it absolutely from the Journal.

1949. (*Chairman.*) You accept it for the class, it is true; but it does not appear that the man is going to apply it to everything in that class?—No, and that is the very point which has been raised and decided in the Court of Appeal in the case of *Edwards* v. *Dennis*, the "Neptune" trade mark case. Many patent agents have comparatively little trade mark practice. Some few of us have a considerable amount, and we want to get some recognised practice in the office, and this can come, and will come on your recommendation before we can get an amendment of the Act. I will give you, if you please, simply a few of the many words that have been accepted since the 1st of January, and advertised in the Journal. I have put the date of the Journal, the words as advertised, and the class of goods for which they have been accepted (*handing in the following paper*).

Mr. P. M. Justice.

11 May 1887.

TRADE MARKS ADVERTISED.

Trade Marks Journal.	——	Class.	——
January 5th, 1887	"Goodall's Lavender Water"	48	Perfumery, including toilet articles, preparations for the teeth and hair, and perfumed soap.
	"Goodall's Plate Powder"	50	Plate powder, furniture polish, razor paste, knife powder, and household preparation, not included in other classes.
January 12th, 1887	"Bass's Soap"	3	Chemical substances prepared for use in medicine and pharmacy.
	"Osborne"	47	Candles, soap, &c.
January 19th, 1887	"Royal Wax"	47	Common soap.
January 26th, 1887	"Hollidge's Ink"	39	Paper, stationery, bookbinding.
	"Brilliant"	47	Soap, starch, blue.
February 2nd, 1887	"Famous"	47	Common soap, &c., &c.
	"	48	Perfumed soap.
	"Priceless"	47 and 48	Common soap, &c., &c. Perfumery, &c., &c.
February 16th, 1887	"Peacock"	47	Blue, candles, &c.
	'Housewife's Friend"	47	Candles, soap, &c.
	"Housekeeper's Friend"	47	" "
	"Lemon Wax"	47	Candles.
February 23rd, 1887	"Bass's Soap"	47	Candles, soap, &c.
	"Conquest"	49	Games of all kinds.
	"Schweppe's Seltzer Water" (on a label)	44	Whole class (including ginger beer).
	"Schweppe's Soda Water" (on a label)	44	" " "
March 2nd, 1887	"National"	1	Chemical substances for manufactures, photography, &c.
	"Twilight"	47	Candles, oils, matches, &c.
	"The Carver's Friend"	13	Cutlery, &c.
	" "	14	Silver and plated goods.
	" "	16	Articles in porcelain and earthenware.
March 9th, 1887	"Colossal"	2 and 3	Whole classes.
March 16th, 1887	"Balaklava"	2 and 3	" "
	"Sebastopol"	2 and 3	" "
April 27th, 1887	"The Worldwide Boot"	—	Boots, shoes, and foot coverings.

1950. At present, under the Convention, a trade mark registered in Germany, say, can get on to our register?—Under the Convention it is so stated.

1951. (*Mr. Imray.*) Not Germany?—(*The witness.*) By treaty with Germany.

1952. (*Chairman.*) I will take France. A difficulty would arise, would it not, under those circumstances, in allowing the use even of foreign geographical words?—My views in regard to geographical words are slightly different from Mr. Imray's. I quite agree that a geographical word should not be allowed as a trade mark where it is descriptive of the absolute place of manufacture, such as "Melrose" was for hair wash, which was decided in the Court of Appeal; and as Balbriggan is; but Balbriggan has become not descriptive of the manufacture of a certain firm, but descriptive of the article, as was the case in the Singer sewing machine case, and for Bessemer steel. It is not the mark of a particular manufacturer, but the place of manufacture of a particular class of goods. Some trade marks might very well consist, I think, of geographical words. For instance, the word "Alpine," which was upheld as a trade mark by Mr. Justice Chitty, seemed to me to be a very appropriate trade mark for ladies' white frilling. It seemed to me to be appropriate and good.

1953. Because it would not be suggestive of its being the place of origin?—Certainly.

1954. It would be obvious that it was an arbitrarily chosen geographical name?—Quite so. But I must call your attention to the fact, which has doubtless been before you before, that at the present time the Trade Marks Office accept geographical words if they are applied for tin plates.

1955. As I understand they treat brands as being in a different position to the other words used in sub-section *c*?—A brand for tin plates, or a brand for iron; but they will not accept it for iron. They say:—No; you must limit it to tin and terne plates, or we will not accept it.

1956. Tin plates and tobacco are the two things, are not they, for which they will accept brands?—My

Mr. P. M. Justice.

11 May 1887.

personal practice in the tobacco class has been very small. I could not say. I have had a few cigarette marks only. There is a point in regard to the proposed wording in the report of that committee "An arbitrarily selected word" which I should like to enlarge on if you will permit me. The Court of Appeal held in the "Electric" and "Melrose" case that a fancy word must be practically a coined word, that is to say, a word which is not to be found in a dictionary. The object in changing the wording there was to show that it must be an arbitrarily selected word, while it might be a dictionary word that is; it need not necessarily be coined like "Opoponax" was, but that, as in the "Edelweiss" case, it is an arbitrarily selected word and as in "Cherry Blossom," which you see advertised so constantly.

1957. That is to say it must be a word which, used in connexion with those goods, would not suggest to anybody that it had any connexion with the goods, or the description of goods, but was merely arbitrarily used as a trade mark?—Quite so.

1958. (*Baron Henry de Worms.*) With regard to the words "Bessemer steel," although it is the name of the person who invented the process, it is now taken, I think, to represent steel made by the Bessemer process?—Quite so; and not the person who manufactures it.

1959. That is not exactly the case with regard to the case of "Balbriggan," is it?—My impression is that Balbriggan stockings or hose are manufactured by dozens of people. As you, I think, pointed out, they are made in Germany, in Nottingham, and in Belgium. That shows conclusively that it is descriptive of the article and not of the person who manufactures it.

1960. Of the particular mode of manufacture?—It may be a particular mode of manufacture, or it may be of the manufactured article.

1961. I am applying the same argument as to "Bessemer." "Bessemer steel" represents a process associated with the name of Bessemer?—That is true.

1962. I want to know whether, in your opinion, "Balbriggan" hose is associated with the particular form of manufacture of hose, and not with the place of origin?—In my mind it is associated entirely with a certain class of goods, irrespective of any manufacturer or any particular method of manufacture. I believe they are made from a particular class of material; that is my impression.

1963. (*Chairman.*) I thought it was a particular make?—As has been pointed out by Baron de Worms, they are made in so many places.

1964. By "a particular make" I mean in the sense of the character of the manufacture?—That may be so.

1965. (*Baron Henry de Worms.*) I take it rather they are not made in particular places, but they are called Balbriggan hose, not being absolutely similar to the hose made in Balbriggan?—It seems to me exactly analogous to Irish linen. With regard to the "arbitrarily selected word" in the same paragraph it is stated it should not be descriptive of its place of manufacture. The words "descriptive of the article" are purposely left out in framing that resolution, for this reason, that we have found constantly that words which are applied for in the Trade Marks Office are refused, on the ground that they are descriptive, words like "Dentoline." They say: "It is evidently a tooth "preparation; the word conveys that idea. We "refuse it." Now there may be a very good trade mark in a word like "Dentoline," or in a word of a similar character.

1966. (*Chairman.*) The word you have quoted as an illustration of the kind of word that would be a good trade mark is not a dictionary word?—No.

1967. May there not be a distinction between allowing a dictionary word which is descriptive of the goods, as a trade mark, and allowing a fancy word in the sense of being a non-dictionary word, and an invented or new word, as a trade mark?—Quite so. There may be a certain difference, but under those circumstances it would come in under the first head of "arbitrarily selected" in the resolution.

1968. "Arbitrarily selected" rather points to choosing something out of the known words arbitrarily. A word newly invented is hardly "arbitrarily selected"?—It may be. It is a coined word of course, and it is "arbitrarily selected" from a number of combinations of letters which you might form.

1969. It is surely not "arbitrarily selected" if it is a new word coined for the purpose of having a meaning which is descriptive of the goods?—Might not the point arise that it is not a word at all, owing to its having no meaning and not being capable of being found in any dictionary?

1970. Does not there appear to you to be an objection to allowing a dictionary word which is descriptive of certain qualities to be appropriated by an individual to his particular goods?—It must not be descriptive of the particular quality of the goods—certainly not. In the same way it must not be deceptive, but it must be an "arbitrarily selected" word which might convey some idea of the goods, or the use to which the goods are to be put.

1971. In that case, to be legitimate, ought not it to be a newly-coined word?—I think not.

1972. Will you give me an example of what you call an arbitrarily selected word which is a dictionary word which would be descriptive of the goods in relation to which you wanted a trade mark which would be legitimate?—To take the instance of the certificate which I have handed to you, I do not think you will find "Hazeline" in the dictionary; it is simply adding "ine" to the word hazel.

1973. What is passing through my mind is this: if you allow a dictionary word to be used, which is descriptive of the goods, in relation to which you wanted a trade mark, then an individual monopolises a word of description which is common to the whole world, and makes it his own peculiar property, which seems to me rather objectionable?—It would, as you put it, be very objectionable indeed, but the resolution is not meant to go so far as that. It is meant to convey the idea that a word may be descriptive of the article when being a coined word; but it would certainly be most objectionable to have such words as "Best," for iron, for example, registered for anyone.

1974. Or "Brilliant" for steel?—That is just what is being done now; for instance, "Brilliant" for candles. You will find in that list "Famous," "Priceless," and "Twilight."

1975. (*Earl of Crawford.*) "Sunlight" soap?—"Sunlight" soap is advertised everywhere. I think "Sunlight" might be a very good trade mark for soap. I see no objection at all. That is a dictionary word. It illustrates "bright."

1976. (*Chairman.*) Take the word "Sunlight." "Sunlight" in connexion with soap would not suggest to anybody that it described any particular quality of soap, or that it was pointing out what qualities the soap possessed. Everybody would understand that to be merely what one may, perhaps, describe as a nickname for a particular soap?—Yes. We will take "Dome" as applied to blacklead. That is a case which has been before the courts, and upheld in the Court of Appeal. I think that might be a very good trade mark, and yet it was to a certain extent descriptive, because he did make up his blacklead in the form of a dome. Being the first to originate the form of the dome for blacklead, and calling his blacklead "Dome Blacklead," I think he was entitled to so call it, but not to the sole right to manufacture blacklead in a dome.

1977. Although a dome was the form in which he shaped his blacklead, "Dome" had nothing to do with any quality or character of the blacklead itself?—Quite so; that is an illustration of what I meant to convey.

1978. (*Baron Henry de Worms.*) You think that a word trade mark ought not to be descriptive of the article to which it applies?—Not absolutely descrip-

tive, and yet it might convey an impression of what is intended, just as the word "Dome" does.

1979. Is not the word "Fluid" applied to ink; "so and so's best fluid ink"?—I should say that was a bad trade mark, because it is purely descriptive. Nearly all ink is fluid. Ink is made in blocks, but subsequently has to be dissolved.

1980. You think that no word, whether a dictionary word or a "fancy word," if it is purely descriptive, or indirectly descriptive of a particular article, ought to be used as a trade mark?—If it is purely descriptive, no; if it is indirectly descriptive, I think it is capable, at times, of being used. It is a very nice distinction.

1981. (*Chairman.*) The illustration you gave was hardly descriptive of any quality or merit in the article. It merely pointed to the nature of the article?—Quite so, and it is a dictionary word. It is words of that character which that resolution was intended to cover and to meet. There is also the point raised there as to arbitrarily selected letters or symbols; for instance, J. 1. I had occasion to apply for a mark of that character for wire, where you have to apply your mark in a very small way, as for barbed wire, which you may perhaps remember. "J" was applied for, and refused on the ground that it was not within the Act. Now those marks are at times very useful, no doubt, and in the States a very large business is done with goods under selected symbols of that kind, such as "S. T."

1982. Was "Sunlight" registered for soap only or for the class which included candles too?—That does include the candles and soap. They come in the same class as common soap, and perfumery and toilet soap is in the next class. I would call attention to one thing which Mr. Imray, I think, forgot, and that is in regard to the certificate issued by our office here. You have before you the Journal. We have here a certificate of registration. It refers us back to the Journal. Here is the mark referred to, 51,194. Here is the description: *Here* we have the number, and *here* the date of application. *Here* we have a date and a letter. It is hardly to be called a certificate. We have a letter stating that the trade mark has been registered, but there is nothing to show absolutely when the trade mark was registered, whether it takes the date of application or the date of this letter, and we absolutely have no certificate at all. That is simply a letter of advice. I fail to find it in the Act. The duration of a trade mark is 14 years, but from when? From the date of application or from the date of that letter? It is a question that many of us have been unable to answer at the present time.

Mr. P. M. Justice.

11 May 1887.

1983. According to the rules, the protection is to date from the date of application?—It is implied, as with patents.

1984. If so, of course the time would run from then?—Yes.

1985. A question has been raised whether that rule is a good one; but supposing it to be a good one, it would make the date the date of application?—It is generally so assumed, but I think it is advisable it should be clearly set forth in the certificates, and a certificate should be issued and not simply a letter advising that a mark has been allowed. That amounts simply to a letter stating that a complete specification has been accepted. There is one other point as to the practice in the office. When in the opinion of the Comptroller an applicant's mark is likely to be mistaken for a previous registered mark he frequently submits applicant's mark to the owner of the registered mark, and asks if such owner objects to the registration, and when the answer is in the affirmative the applicant's mark is generally rejected. You have the forms used by the office before you. It is certainly a most objectionable practice to have an application decided by a trade rival.

The witness withdrew.

Mr. WILLIAM CLARK called in and examined.

Mr. W. Clark.

(*The Witness.*) Taking up the point where Mr. Justice left off just now as regards arbitrarily selected words, I think that the resolution which the Institute has included amongst those resolutions should be modified so as to include invented words. Difficulty very often arises with the manufacturer in inventing a word which shall not be indicative. A trade mark that is not indicative at all is perfectly useless, because it would very probably be deceptive. Mr. Justice referred to the word "Dentaline." It is an excellent mark for tooth powder. It does not indicate the quality, but merely indicates that it is a tooth powder. "Dentaline," as applied to any other manufacture, would be absurd. It is, therefore, a very difficult matter to deal with.

1986. (*Earl of Crawford.*) "Coraline," I believe, is used for false gums?—Yes.

1987. That gives you no idea of false gums?—No.

1988. On the other hand it gives you an idea that it is an article of jewellery?—If it is deceptive, of course it would be bad, but "Dentaline" applied to articles of clothing would be ridiculous, yet it would probably be accepted as a good mark unless it was deceptive.

1989. (*Chairman.*) So that you would modify it somewhat in this way: "An arbitrarily selected or invented word"?—Yes, I think so.

1990. Which shall not be descriptive of its place of manufacture, nor, so far as regards the arbitrarily selected word, descriptive of the article?—Nor descriptive of the quality of the article.

1991. Nor of the article itself as regards an arbitrarily selected word, because that is supposed to be a common word, common to all the world. You could hardly allow a man to appropriate a dictionary word which is descriptive of the article, and so prevent anybody else using that which may be the best or the only word which would describe it?—No, that is true. I should refuse such a mark as that.

1992. It would carry out your idea to allow an arbitrarily selected or invented word—to confine the prohibition to its being descriptive of the article to the selected word as distinguished from the invented word?—Quite so. Although there are many words which applicants cannot get upon the register, manufacturers practically get the benefit of that word in trade by filing a representation of the article. We will take the word "Star." A man could very well get the representation of a star registered. He then, practically, gets the word "Star" as a trade mark, although the word is not actually registered by him. I should like to point out first that these resolutions have not received the unanimous approval of even the whole of the members of the council, that is to say, we are not all agreed upon the first resolution. I differ as regards that resolution so far as trade marks are concerned.

1993. You mean as to allowing everybody to register a trade mark?—Yes; of course, theoretically an examination whether into inventions or into designs is a very good thing, but practically it has been found, as we very well know, in the case of inventions, that it is impossible that the Patent Office should satisfactorily carry out the idea of examining and comparing one invention with another before granting a patent. Now, this objection also prevails with regard to designs. It is true that it is only to a limited extent, but still there is an objection to an examination of designs, because, unless a person is very well acquainted with the trade, he has very great difficulty in perceiving any difference between two designs that may be brought before him. Take, for instance, a lady's mantle. To the Comptroller of Patents, who is unacquainted with the trade, the two designs would very likely appear quite similar, or so similar as to

Mr. W. Clark.

11 May 1887.

make the design which it is sought to register not capable of registration, but on showing such a design to a manufacturer, he would probably recognise it as being a totally different article; therefore, I think, that the office should not be allowed to object to designs, that is to say, that the office should register designs in the same way that they accept patents, without examination. With regard to trade marks, the same difficulties do not arise, because a trade mark is defined by the Act. There is no definition of an invention, and, in fact, it is almost impossible to give a definition—the question is too vague; but a trade mark is defined by the Act, and therefore, I think, that if the office is properly constituted, there should not be great difficulty in deciding what is a proper trade mark for registration. Moreover, it is to be recollected that, in the case of an invention or design if a patent or the registration of a design is refused, the applicant loses his whole property. He cannot invent something else; but he can with a trade mark. It is true, he may lose some little time in bringing his article before the public, but he does not lose the whole benefit of his manufacture, as he would do in the case of his invention or design. Therefore, so far as the first resolution is concerned, I would limit the objection to the examination of designs. Moreover, it must be recollected that the public ought to be protected. If you register any trade mark you may cause very serious injury to an innocent trader. For instance, a man might register "Smith's best soaps," and he might with such registration as that harass his rival in trade. I think that would be giving him an unfair advantage. He might be a rich manufacturer, and he might completely ruin a smaller rival. There is one point which I believe Mr. Imray omitted to bring before your Lordships. It is the question of the Comptroller, where registration is sought for of a trade mark which resembles another mark, sending letters to the person already on the register, asking him whether he objects to the registration. I think that is a proceeding which is very much to be deprecated. It is practically inviting an opposition. The printed forms which they send out are annexed to the resolutions.

1994. You mean asking for consents?—Yes.

1995. We have had that fully brought before us?—I should like to lay stress on the practice which prevails in America. As Mr. Justice has pointed out, in that country one has to file not only a representation of the mark, but a description of it with a claim annexed. As your Lordships very well know, a trade mark is very often a very complicated device, and it is sometimes very difficult to distinguish which is the main feature of the mark—which part of the mark it is that the applicant desires to register. Take, for instance, the case in which a man might have a label bearing the representation of a lion in the centre, and a border, in which certain stars appear as an ornamental border. The Trade Marks Office here would very likely refuse that mark, because some other person had on the register a star or some stars. They would not take into consideration the fact that the star formed a very subsidiary portion of the label. I think if we adopted the American system, and the applicant had to file with his application a full description (in the same way that one has to do in the case of a patent) ending with a claim, pointing out distinctly the feature which he claims it would not only very much simplify the duty of the office, but it would enable an applicant to see exactly whether he could register his mark. It would also, I think, facilitate appeals to the Court. I can see no difficulty about it.

1996. Would it not a good deal increase the difficulty of search if you had not only to look at the other design but to read the other specifications and claims?—No, I think not, because you would only look at the claim. For instance, a man with such a label as I have instanced would describe the whole label, and he would say that his claim is the representation of the lion. A person searching would see that the lion was registered for that class of articles, and he would not have to take into consideration the question whether the stars were registered or not. I think it would facilitate applications very much.

1997. (*Earl of Crawford.*) According to that you would allow a man to register a certain thing and then overload it with a number of other things for which he obtained no protection?—No.

1998. Practically it would come to that; you only claim a lion and yet you have stars on it?—Because that constitutes a portion of the border. The court here will not allow an applicant to mutilate his label and say "That is my trade mark." He must file the whole label.

1999. You state in your specification that he only claims the lion?—Yes.

2000. Or the lion in connexion with the stars in the border?—No; the lion alone, if that is what the applicant intends to claim.

2001. You have the addition of the stars for which you do not get protection?—Yes, it may form only an ornamental portion of the label.

The witness withdrew.

Mr. J. L. Whittle.

MR. J. LOWRY WHITTLE recalled, further examined.

2002. (*Chairman.*) Will you proceed with any remarks you have to make with reference to your criticisms and suggestions upon Mr. Johnson's evidence?—With reference to No. 1, as to the increase of staff, I have sent for a paper from the Board of Trade which I expect will be here before the sitting is over. Perhaps you will allow me to postpone that.

2003. No. 2 is as to the period of advertising applications?—There has been, as you are aware, under the present Act, a reduction of the original period. The original period was three months. It was considered in framing the Act, on account of the greater communication with different parts of the world, that two months would be sufficient now, and it does prove to be satisfactorily sufficient for America and the Atlantic coast, but I think it is hardly sufficient for people who have an interest in China. I should doubt if there is any practical demand for a reduction of the period. I think one month would be sufficient as regards England.

2004. As regards Australia, you cannot write there and get an answer in the two months?—One month would be rather short for the United States and Canada.

2005. (*Earl of Crawford.*) Two months would be too short for Australia?—Yes.

2006. (*Chairman.*) One month would be sufficient for the United States and Canada, would it not?—It might be done, of course. As regards the period for lodging counter statements, I think it would be a great advantage to reduce that to one month.

2007. What have you to say as to No. 3 "unnecessarily large blocks for advertising applications "should not be accepted"?—I doubt if there is any practical difficulty or inconvenience experienced in that matter. The number of cases are not numerous. The practical difficulty with the office is to get blocks sufficiently large to show the marks to the public. We have constant complaints about that.

2008. At present it is suggested that some people get rather more than their fair share of space in the Journal, and so delay the publication of other marks?—I doubt if the delay arises from that. The delay arises from several matters which would come under the first head. People are not kept waiting on account of the demand for large space to any extent.

2009. You do sometimes keep marks waiting for publication, because the Journal is full for that issue?—It has happened once or twice, but those cases are very rare. The question may be whether a particular trader shall be allowed to advertise himself in an

official journal, and occupy a larger advertising space than another person.

2010. He does not pay at present. He pays extra for an extra depth, but he does not appear to pay anything for an extra width. He may go quite across the page and pay no more than a person who only takes up a third of it with the same depth?—There is that, certainly. I had intended asking the Comptroller of the Stationery Office for some information upon that point.

2011. What have you to say as to No. 4. "Applications from single persons trading as firms should "be accepted in the name of such firms without disclosing constitution of the firm"?—That is a point which has been a good deal discussed recently. Where John Brown trades as Smith and Co., an application is made by an agent with an authority signed Smith and Co. The question is whether the office is able under the provisions of the Act to take that without some indication of what the company is.

2012. What is suggested is this, that sometimes a single individual trades as a firm, he then takes in a partner, the constitution of the firm changes, though the particular firm remains the same, and it is suggested that it would be an advantage to allow the firm to continue as the owners of the trade mark without the necessity of assignment. Do you see any objection to that?—I do not, as regards the practice of the office. It is only a question of general public policy. It arises specially under the modern practice of people trading under names implying an association, like "Bicycle Company" or "Coventry Company," and things of that sort. It is a matter of general public policy, and not so much for the office.

2013. No. 5 is a suggestion that trade committees might be appointed to assist the office with their advice upon trade questions. Do you think that would be advantageous and practicable?—I think we have a practice that in most trades answers the same purpose. For instance, there is an association called the Wine and Spirit Association. I very often write to the secretary to ask their opinion about certain classes of marks. They are very obliging in giving us information. Wherever we can make out a trade association in existence, as a trade body, it is the constant practice of the Comptroller to write and ask their advice about terms, for instance, common to a trade, and things of that kind. As to carrying it out by an elaborate system, I doubt if you would find bodies of traders willing to undertake and carry it on effectively. The value of trade information is very much appreciated by the Comptroller whenever he can get it. There was an association connected with chemistry and medicine in provincial towns with which he was frequently in communication in 1884, as long as it existed.

2014. The next point to which our attention was called was the difficulty of dealing with words of foreign origin, where the office accepted as trade mark foreign words which have a distinctly descriptive meaning of the goods, when they would not accept the English word similarly descriptive of the meaning, and it has been pointed out that difficulties may arise from that practice in view of the Convention?—If your Lordship will allow me I will take the group of matters referring to words, with some observations which I want to make to your Lordship on words generally. Then as to labels, that is a matter which was a good deal considered by the Commissioners of Patents, and the opinion of this Committee would be very important upon that. It struck the Commissioners of Patents and Sir George Jessel as important that a certificate should be perfectly clear in its meaning with a view to the special object of the certificate, and the fact that the passing of the Act of 1875 was to provide in certain cases for registration abroad. Various views as to details in the courts of Spain and Holland are taken. They attach great importance to colours. It was Sir George Jessel's opinion that the certificate ought to keep strictly to what was on the register and nothing else. The only point in which a departure was authorised by the Commissioners of Patents, and it has been followed under the new Act, was where a mark was registered in colours, and they sent for the certificate in black and white, the Comptroller has certified that the mark was registered, adding on the face of the certificate that it was registered in colours.

2015. What was pointed out to us was this, that sometimes when a certificate is applied for the proprietor of the trade mark owns no more of the labels, and perhaps cannot even get the label printed exactly like the one which was registered. It is not always possible to reproduce at a subsequent date precisely the same colour, and in that case it would be reasonable to allow the applicant for the certificate to obtain the certificate without providing an exact facsimile if the differences were pointed out in the certificate. Do you see any objection to that?—Going into the details of the differences would be an elaborate process; it might be done in certain cases, but it would require care, for instance, in describing the differences of colour beyond the fact that one was in black and white, and a reference to the mark on the register in colours.

2016. It is only suggested that the difference should be a difference in minor non-essential elements and in the colours—that the broad features of the mark—that which distinguishes it as a mark, should appear in both?—That is, I think, practically done. There have been slight points of stops and things of that kind which the Comptroller has ignored.

2017. The next point to which our attention was called was the suggested abolition of appeals to the Board of Trade. I think, on the last occasion, you stated all you had to say upon that?—Yes, anything further I might go into in regard to Manchester matters when Mr. Hutton is here again.

2018. What have you to say with regard to No. 9. "Devices, when descriptive emblematically of the "goods to which to be applied, should not be registered"?—That is a very important question which has been a good deal discussed with Sheffield from time to time. They urge strongly on the Commissioners of Patents that representations of the goods ought not to be accepted as trade marks. I think I may say the Commissioners of Patents very much concurred in the spirit of that.

2019. What was pointed out to us was that if you allowed a man to register a hinge as his trade mark in relation to such an article of manufacture, you might render a person liable who, in his trade catalogue, had pictures of hinges, showing the price at which he was prepared to sell them?—That would seem to be the practical difficulty, but the difficulty the Comptroller felt was that the Act did not empower him to refuse. It was a question how far he could refuse them as not distinctive. It was considered by the Commissioners of Patents, and his practice has been to take one such object and block the class, as it were. For instance, in the case of stoves, each stove manufacturer adopts a picture of his particular stove. One of the earlier cases that went on appeal to the Board of Trade was a question whether one closed stove should be refused on account of another closed stove. The Board of Trade affirmed the Comptroller's decision that they could not go into distinctions of goods of that kind.

2020. The 10th point that Mr. Johnson made must be reserved until you deal with the words. The 11th is that the Board of Trade directions, so far as they affect public procedure, should be published?—That is a matter on which the Board of Trade will be able to inform your Lordships better than perhaps we can. Perhaps certain matters might be dealt with by modifications of rules and so forth. The directions of the Board of Trade, given under section 82, have latterly led to some confusion rather detrimental to a certain extent. They had general power to see that the work is carried on in order, not to conduct it themselves, I submit. The more important matter, perhaps, as regulating the policy, would be the advice

Mr. J. L. Whittle.

11 May 1887.

of the law officers, because they are to some extent, next to the decision of a court, a guiding force upon the policy. I believe if the principle of administration could be settled there would not be this demand. It is the changes in the policy which make the public anxious to know how this variance arises, and anxious to have the opportunity of criticism. Any publication of the ordinary communications which the Board of Trade may think it right to make under section 82, might, I am afraid, hamper administrative work.

2021. The next suggestion that was made to us was this: that the Comptroller ought not to refuse to register a word mark, for example, because it has some reference to a class who may possibly use the article for which the trade mark is required. The illustration given to us was the word "Mariners," in connexion with rum?—In the way I interpret that point, it is a part of the word question how far you should apply the term "descriptive" to the uses.

2022. You deal with that under the word question?—Yes.

2023. With regard to brands, what have you to say?—In addition to what I mentioned on the last occasion, I would point out that I think the word "brand" is used as the equivalent of a trade mark in that section 64. It has not any special magic, as people seem to think.

2024. But, practically speaking, you have allowed that to be done with reference to brands in certain classes which you have not with regard to labels or tickets in other classes?—Yes. There is a theory that "brand" had some particular significance of its own that could be dealt with as an entity under the Act. I never could follow that idea. At first there was a direction given, on conference with Mr. Calcraft, that anything called a brand might be dealt with specially as a brand, and after a further conference with him, he limited it, on my suggestion that such interpretation would involve a good deal of confusion to tin and terne plates.

2025. Is not it extended to tobacco also?—No, only to tin and terne plates.

2026. In the common acceptation of the word, "brand" is quite as much used in relation to cigars and tobacco as to tin plates?—And it is also used in regard to whiskey. As Mr. Mundella mentioned the other day it is the common name in America for a trade mark. I will show your Lordship an example here (*producing same*).

2027. (*Earl of Crawford.*) We use "brand" also in connexion with pig iron?—I submit the word originally means, of course, something impressed in some way by a hot iron on metal or wood, or by a stamp on butter. Its actual mechanical origin does not limit its subsequent use. People use terms of trade for convenience without concerning themselves with the strict propriety of the use.

2028. (*Chairman.*) The next suggestion is that the rule with regard to old trade marks of allowing registrations up to the number of three without the necessity of resorting to the court should be again introduced?—It might be a question whether there should be such an amendment of the Act. I submit that under the present Act it could not be done with a similar mark.

2029. At present it is only done by application to the court?—Yes.

2030. Do you see any objection to allowing it to be done by the Comptroller without going to the court?—If there were some formal tribunal, or some mode of doing it, specially organised, it might be done. Practically I think there are but a small number of old marks outstanding, and there is a certain danger that shifty applicants (and there are shifty applicants) will convert a mark, when they find a difficulty, into an old mark too readily. I have known a great number of cases—the majority, certainly, of the cases of old marks, where the claim for old user is found out after the difficulty arises in the office. I should fancy there is no great practical want of such a change.

2031. The next point is that marks which the office at one time refused, when its practice changes, should not be accepted from other persons without at least notice to those to whom they have been refused?—That appears a very reasonable proposition; but if the practice were steadied, as I hope it will ultimately be, I think the hardship which that proposal is intended to remedy would not arise to any extent.

2032. Surely it ought never to happen?—The object of trade mark legislation being to facilitate the *bonâ fide* practical man who wants a trade mark as quickly as possible, I should think the Committee might hesitate to recommend any addition to the procedure which would necessarily delay that object. If a man comes and hits upon a mark which the Comptroller is in a position in the state of the law to accept, it would be a hardship upon him that his business should be kept waiting while the Comptroller searched back through his records to find this refused mark, and then to ascertain from the applicant for the refused mark whether he cares to renew his claim or not. In many cases, I think, he would get very little thanks from the original claimant. In the particular state of the Manchester question, I may say that where, owing to recent changes in the practice, I have come upon a mark that had been refused within a year, the Comptroller has communicated with the original applicants and ascertained their views whether they cared to renew it or not.

2033. The next suggestion is that the applicant should be required to state whether he has used, and if so, for what length of time, the trade mark, although its user be subsequent to August 1875?—That would entail a good deal of additional work, and I doubt its value if the work were really going forward rapidly and well, and up to time. The principle of registration was started with the view of encouraging everybody to register a mark right off, not to wait and speculate on whether they found the mark useful and then go in and register. There is no compulsory registration in the English law as there is in the German law. I submit that it is doubtful whether people should have any encouragement whatever for standing outside registration.

2034. The suggestion made by Mr. Johnson was this: that it would prevent oppositions that are now sometimes entered upon under the belief that it is a new mark for the first time suggested when the opposer has himself used it for some time?—That as an additional fact might do no harm. It is a balance whether it is well officially to recognise the practice of people using marks without applying to register. He has accompanied that by a suggestion that the claim should be made by declaration. That would add considerably to the trouble. The trouble of examining declarations would be a considerable addition to the work of the office. But if it were made simply a statement in the advertisement for what it might be worth, and found desirable, I do not see that it is at all impracticable.

2035. The next suggestion was that it should be provided that the user should not necessarily be in bodily connexion with the goods, but it should be sufficient if it were by way of a price list, circulars, show cards, or otherwise?—That is a matter of general policy. It is a large question. As to the nature of a trade mark, I submitted before that the special object of a trade mark was a mnemonic to enable a purchaser to find the goods, and it is a different thing from the mere sign of an establishment. I think all trade marks in modern decisions are tested by their application to the goods. I believe there is a case where the late Master of the Rolls admitted evidence of user in an invoice; but then it was rather as contributory evidence by which he could imply user on the goods.

2036. (*Earl of Crawford.*) A mnemonic is something which, produced to the mind, gives you the idea of that which you wish to recollect, is it not?—Yes.

2037. And yet your trade mark is not allowed to be descriptive of the goods; so that you have to

Mr. J. L. Whittle.

11 May 1887.

remember two things, you have to remember the trade mark and then translate it by some arbitrary means. So it is not a mnemonic?—It is descriptive of the particular class of goods. It is a description of the goods which result from a particular enterprise.

2038. (*Chairman.*) What is the clause under which the trade mark must be used in connexion with goods?—Clause 65 says: "A trade mark must be registered for particular goods or classes of goods." It does not say actually on the goods in the Act anywhere. Then it says—sub-section 3 of section 62—it "must state "the particular goods, or classes of goods in con- "nexion with which the applicant desires the trade "mark to be registered." Section 70 provides as to the goodwill. I might mention one class of inquiry as to Mr. Johnson's point, No. 17, as to the sign of a shop. I think the idea of the court is that a trade mark is a different thing from a sign of a shop—of a particular establishment. It must be more closely connected with the actual goods.

2039. No. 18 refers to the second sub-section of section 64. "There may be added to any one or "more of these particulars any letters, words, or "figures, or combination of letters, words, or figures, "or of any of them"?—I think the observation refers to questions arising on words in connexion with a sort of *quasi* protection which the Comptroller gives to unusual words which are added to marks containing some essential particular, as, for instance, the words "Stop-ache," in this mark, No. 58,267, containing the signature of the applicant.

2040. As the Act at present stands, if you once have a particular mark coming within *a*, *b*, or *c* of section 1 you may add to it anything you please?—Yes. Then the Comptroller thought he was at the same time at liberty to consider the general question whether the addition of added words rendered the whole mark as calculated to deceive or mislead. He would refuse accordingly to let another applicant add the words "Stop-ache."

2041. There would seem to be some limitation, perhaps, necessary to that second sub-section, otherwise you might take a written signature, or a distinctive device, and yet you might add to it such words or figures, or combinations of letters, words, or figures, as, if I may say so, to swamp the distinctive device, and make the most prominent objects in your label words that either were owned by somebody else or that you could not have a right to register?—That was the Comptroller's view under the new Act. Under the old practice there was no search for added words, and no record of these things. It dealt merely with the device or the essential particulars.

2042. (*Baron Henry de Worms.*) Take the case of "Stop-ache." Supposing that word were a good word, you might use that and put "and pain." That would be virtually the same trade mark?—Yes.

2043. (*Chairman.*) This is a written signature—"Samuel Lawrence"—you might have the name of another manufacturer—James Brown, we will say. He might register his own signature, and he might put over that exactly what Samuel Lawrence does?—Yes.

2044. Or he might put over his signature "James Brown"—combinations of words, fancy words, which had been registered by somebody else?—The case has constantly arisen about tobacco labels and cigar labels, with a crowd of words put in with a device that turned out to be the names of other people's marks. Then No. 19 I would take with No. 1.

2045. What do you say as to No. 20, as to substituted service where the registered owner can no longer be found at the registered addrsss?—Practically that only arises now as regards the question of consents. No doubt if the system of consents is to be considered an essential and leading portion of the system, it would be desirable perhaps to follow it up by some procedure of this kind. The difficulty about finding addresses will be, I think, practically solved when the time for renewal comes on. If the system of consents is considered worth a further development then something of this kind might be done; but I do not know whether your Lordships care to go into that question of consents.

2046. There would seem to be no particular objection to allowing substituted service, where service is necessary at all, on a person who is no longer at the registered address?—Substituted service is hardly the question.

2047. Or rather some notice which is to be given in lieu of service?—On declaration that the man is not to be found at the address, or cannot be found at the Post Office, that you should assume his consent or disregard the mark, that is what it comes to.

2048. Then the 21st suggestion is, that trade mark cases should all go to the same judge. That, I suppose, if it could be carried out, would be desirable?—That would be a question of general policy. A constant knowledge of trade mark work is desirable, but, of course, it would imply a Bar and solicitors as well, and whether public policy encourages separate courts is a matter for your Lordships to consider.

2049. As to the next point, which is that provision should be made for the protection of registered owners of trade marks in the use of their marks as a whole when portions are omitted under the registration by order of the Patent Office, what have you to say to that?—That suggestion, I think, is founded on some slight apprehension of how the law stands. I think it has been recognised in the court that a man having an essential particular registered he did not lose his right to it by adding on to it some common device or term. I submitted to your Lordships the other day that it might be desirable to amend section 74, as to allow people to include in a new mark a common device. If this proposal applies to cases in which parts are supposed to conflict with other marks, it might lead to a good deal of confusion and mischief. Any embodiment of that suggestion would have to be framed with great care to avoid that, because a mark is frequently sent in with a portion conflicting with another man's mark, and the applicant is required to run his pen through it, and the Comptroller takes it instead of requiring a new application. It would not do to legislate in such a way as to give such an applicant any claim to the use of that part afterwards.

2050. The next point to which our attention was called was the necessity for some definition of trade mark rights in connexion with words applied to patented articles and secret preparations?—That I propose to take in connexion with words. No. 24 is important. Take this case of Lambert and Butlers'. That label refers to the smoking mixture; he might want his mark to use with cigars. In that case he puts a note, saying the words descriptive of the goods are varied in use by other words descriptive of similar goods in the class, and he claims tobacco, manufactured or unmanufactured.

2051. That is the point with reference to the series of marks under section 66?—Yes.

2052. Do you see any objection to what Mr. Johnson suggests with reference to that section?—If there is any doubt as to whether that provision is legal or does really cover the various goods it would be desirable to clear it up. The view of the Comptroller was that section 66, providing for the series, was collateral with that practice, and did not exclude that practice. He may either register his series, setting out every label with all these variations of goods, or he might register a single label as you have it there, with its covering note, and if there is any doubt as to the validity of that, it is very desirable that it should be cleared up.

2053. What do you say as to its being expedient to allow the registration of short phrases?—That I propose to take with words. No. 26 refers to Rule 33. It is a question whether that notification or simple notice of the actual registration, should be approximated more to a certificate.

2054. We have this morning had the suggestion made to us that it would be an advantage to do here

Mr. J. L. Whittle.

11 May 1887.

as they do in America, attach a copy of the mark to the certificate?—Rule 33 does not refer to a certificate.

2055. It was called a certificate because the form it takes in America is that of a certificate, with you it is notice to the applicant that his trade mark is registered. It was suggested that instead of that there should be a certificate of registration, that instead of its being in the form of a notice it should take the form of sending to the applicant a certificate of registration with a copy of the trade mark?—That is to some extent a question of fees. The office does not charge anything for this sort of advertisement of its own work which small traders like. It would be a point on which the Treasury might desire to be consulted.

2056. (*Earl of Crawford.*) That might be applied to everything, whether registered or not, because it does not give the slightest clue to what the thing is; it merely says the application has been made?—Yes. It was considered at the time when that was invented, by the Commissioners of Patents and the Comptroller, that care should be taken that it should not be used as a certificate.

2057. (*Chairman.*) Supposing it is a mere indication of registration, would it not be an advantage to accompany it with a copy identifying the mark registered upon the face of the document which says that the registration has taken place?—I do not think there would be any harm. It would be a little additional labour, that is all. That point would have to be considered. It should not be developed, without considering the question of fees, into a substitute for the certificate.

2058. The next suggestion relates to the certificate; it is that a single certificate should be obtainable for general use, but not limited to particular legal proceedings?—That is also a matter of policy as to whether the certificate should not as much as possible be brought up to date in order to give the certificate its fullest value for registration abroad.

2059. May not considerable difficulty arise from the necessity of obtaining a fresh certificate every time legal proceedings are taken. It necessitates delay, and sometimes there is a difficulty in providing a fresh copy of the label?—Of course the idea of the Treasury was to take care that there were sufficient fees.

2060. It is a question of fees?—Mainly.

2061. If you required some additional fee for a general certificate in lieu of a particular one there would be no practical difficulty or objection?—No, I think not. The original fee was 1*l.*, and it was reduced under this Act to 5*s.*

2062. Suppose you required 10*s.* for a general certificate?—I do not think there would be any special difficulty. I should add that I think the object might be obtained in a way by that general certificate provided for by the rules. Under Form T. 1, an applicant can ask for a certificate of anything done by the Comptroller under the Act. He answers in Form U., setting out anything on the register.

2063. The next point is as to granting certificates of refusal in connexion with new marks?—There is the possible danger that what is really a certificate of refusal might be so framed or used as to mislead foreign courts as to whether the mark really was registered or not.

2064. The suggestion relates I think to section 77, which is that "A person shall not be entitled to "institute any proceeding to prevent or to recover "damages for the infringement of a trade mark "unless, in the case of a trade mark capable of being "registered under this Act, it has been registered in "pursuance of this Act, or of an enactment repealed "by this Act, or, in the case of any other trade mark "in use before the 13th of August 1875, registration "thereof under this part of this Act, or of an enact-"ment repealed by this Act, has been refused. The "Comptroller may, on request and on payment of "the prescribed fee, grant a certificate that such "registration has been refused." The suggestion is not one of substance, as I understand, but one of form, that people object to obtaining a certificate of refusal, because it rather points to some impropriety or illegality, and that there should be a provision for some other indication of what has taken place, than a certificate that registration had been refused?—Of course the fact of the refusal incapacitates the owner from protecting his mark in certain foreign countries; but I do not see how that is to be got over if the mark is refused. He could obtain a general certificate if he knew that the mark had been applied for.

2065. You might have the certificate in the form that the mark had been applied for, but that he could not obtain registration here consistently with the statutory provisions in relation to such marks, or something of that sort?—Yes; or setting out the reasons for it.

2066. The next point is that provision should be made for accepting disclaimers of common devices forming portions of new marks?—That is what I suggested to your consideration in connexion with section 74, as to whether it might not be possible to accept these common devices. That would require special legislation.

2067. Then it is suggested that disclaimers in connexion with common words should not be insisted upon when such words formed part of the name of applicant?—That is a question which has arisen similar to that about the status of added matter. We know that certain terms are common to the trade. A company starts, calling itself, say the Windsor Soap Company, and the Comptroller does not refuse to register a label showing their name, but he asks them to disclaim any special claim to the use of the term Windsor in connexion with the soap trade.

2068. Do you think if disclaimers are made they should be published in the Official Journal with the applications to which they refer?—I should think that would be very useful.

2069. Then it is suggested that the fees on application should be increased, and on registration decreased?—I should like to take that with No. 1, and to mention what has been done about the fees from time to time.

2070. As the matter stands at present a considerable number of applicants do not proceed to registration?—A considerable number.

2071. The fee on application hardly covers the work that arises from the application, does it?—I do not think there is any deficiency of fees as the work goes on, any deficiency of supply.

2072. There is very little more work done on registration for an applicant who proceeds to registration than is done for every applicant even though he does not proceed to registration?—There is a considerable amount. Of course, the search is a very heavy part of the work, but the object of reducing the fee was to encourage people to depend on the office to make searches, and if searches could be made quickly and promptly you would have a very large number of fees that would pay. People do not mind sending one, two, or three marks in succession to try their chance, knowing something of the marks in use in the trade. They will take their chance willingly, if they can have a decision on the matter in a week. They will go on sending in marks readily enough. At present they would, I think, be disposed of without over-burdening or doing too much for the money if the work was up to time.

2073. Has not their not being up to time arisen from the amount of work that has to be done?—Yes, that is so, certainly, but the fees received would pay for additional staff.

2074. We have had it suggested to us by more than one witness that it would be a good thing to subdivide some of the classes, and allow registration in respect of a subdivision instead of the whole class; that there are many classes so wide that particular traders only want to register in respect of a small portion of the goods named in the class?—That is so. Many traders only want registration in respect of

certain goods in the class; but, as a matter of fact, classes are practically subdivided; registration for goods alone has gone on from the beginning of the registration system. The registration for a class was introduced into the original Act with a view to enabling a large dealer to claim a whole variety of goods without paying separate fees for each article.

2075. Supposing a man registers for goods alone, can anybody else register for the class?—Not the same mark for the class.

2076. Can he register the same mark for any other goods in the same class? — Yes, that has always been the practice.

2077. Under what clause?—Section 62, sub-section 3, states that it must be used in connexion with particular goods or classes of goods. Then when we come to section 65, we have again "particular goods, or classes of goods;" and the same words "particular goods or classes of goods," and not merely "classes" occur in section 70. In section 72, sub-section 1, the wording is somewhat different. "In respect of the same goods or description of goods," and there is no allusion to classes.

2078. (*Earl of Crawford.*) Was there any definition of the classification of the goods contemplated when the Act was passed. There is merely a classification here; there is no subdivision?—There is only a classification. Rule 6 says, "for the purposes "of trade marks registration and of these rules goods "are classified in the manner appearing in the third "schedule hereto."

2079. (*Chairman.*) Supposing that the applicant registers for particular goods, you would allow no one else for those same goods to register the same mark?—That is so.

2080. But you would for any other goods in the same class?—If the Comptroller was satisfied that the business was sufficiently distinct so that they would not be calculated to deceive.

2081. Supposing that the applicant wanted to register for we will say three of the articles described in a particular class, and did not want to register for anything beyond that, would he have to register separately for each of those articles, or can you register for a part of a class in that way?—He could register on the one application any number of articles he sets out within the class.

2082. (*Earl of Crawford.*) For instance, in clause 12, he could take knives, forks, and scissors, as articles of domestic supply as opposed to shears, files, and saws?—Claims are generally in class 12 for cutlery or edge tools, not for particular articles.

2083. Supposing you give me a lion, and I take a mark for knives, forks, and scissors; would you give anybody else who applied for it a lion for shears, files, and saws?—Not for shears and saws.

2084. Then what is the use of making a subdivision if you consider shears and scissors alike, and yet you put them in subsections?—The terms in the second column of the third schedule have never been recognised articles as subsections; they are illustrations.

2085. (*Chairman.*) You say they are subdivisions, but I do not find subdivisions?—Subdivisions is not the term used; but descriptions of goods, that is how the Comptroller has always regarded them. If he can be satisfied that a mark applied for is used on a description of goods that in business is distinct from the goods to which other marks in the class are applied, he thinks he is not at liberty to refuse the applicant's mark.

2086. (*Lord Macnaghten.*) Does an applicant derive any advantage from limiting himself to certain goods under a class, does he save anything in the way of a fee?—No.

2087. (*Chairman.*) Would it not be simpler to make a larger number of classes and register for the class, the classes of goods that are commonly manufactured together by one manufacturer?—The rearrangement of subdivision and classification is a serious enterprise. I do not know whether your Lordship has seen this guide to the classification of goods, it is one of the most troublesome pieces of work helping people to what class they should put particular goods in. The simplest plan would be for an owner to register for the particular article on which he puts his mark, but such a course would often necessitate a tedious enumeration. Take a hardware merchant in Birmingham. If he were to enumerate everything on which he puts his mark his claim would be a small volume. Therefore, the principle of registration for all metal articles in class 13, for instance, was put in to facilitate his claim.

2088. Take porcelain and earthenware, class 16; the same people do not commonly manufacture china and bricks, do they?—China and earthenware are very often manufactured together.

2089. Some kinds of earthenware, but not bricks?—Bricks, hardly.

2090. I think the illustration suggested to us was beer and cider, and wine, whiskey, and liqueurs, that some people would be content to register for beer and cider only, and others for wine, whiskey, and liqueurs, and that in that way you would by a subdivision of classes prevent the possible devices being so soon used up. It is true a man might register for particular goods, but the class-existing people register for the whole class, which they can do just as cheaply, whereas if you made a subdivision of classes the man who only wanted beer and cider would not register for wine, whiskey, and liqueurs, and therefore would leave the mark open for those who only wanted to register for what is now the other part of the class?—I think an additional fee for the class is a very important thing, and it might be very desirable to consider it, because the search at present for that class is exceedingly difficult; it enormously increases the work.

2091. That will be diminished *pro tanto* if you cut the classes up somewhat?—As a matter of fact they are; it is only terminology.

2092. No, they are not, because a man would naturally say why should he trouble himself to put any limit; the simplest thing for him to do is to register it for the class, whereas if it is divided into two he does not want to pay two sets of fees, and he will take the more limited class which he wants?—It might be advisable to reduce the area of the classes. The difficulty arises as to what you would do with the 10 years' registrations which have existed for the class. The whole question of classification will require consideration when renewals come on. It was done in a hurry and some articles have got into a wrong class. It was perceived early in 1876 that the classification was very hasty and very unsatisfactory. It was founded on the classification for goods in the Exhibition of 1851, which was the nearest analogy that the Treasury could find in starting the office. The wording of section 72 sets out the grounds on which the Comptroller may refuse a good trade mark for a particular applicant, even though it is a good mark, as distinctive within the Act. There is no allusion to the classes, but to the description of goods, so that the objection founded on liability to deceive would seem to rest on the nature of the case, and not upon a mere artificial grouping of the classes. I am stating this as the reasoning which influenced the department. If, therefore, the Comptroller has satisfactory evidence that the business in which the applicant uses his trade mark is distinct from the business of the registered owner, he considers he is not at liberty to refuse the mark upon the ground that both these descriptions of goods are found in the same class.

2093. What do you say as to the suggestions that a fee of 1*l.* or 2*l.* might be charged for expediting an application?—The necessity for that, I think, would be obviated by bringing the business up to time. I do not think many people would care to pay it, but there could be no harm in it.

2094. The next suggestion is that one certificate might be obtainable for use in foreign registration, although the mark was registered in various classes, there being an initial fee for one class and an addi-

Mr. J. L. Whittle.

11 May 1887.

tional and larger fee for the whole of the rest of the classes?—That is simply a question of fees. As a matter of fact, the Comptroller does issue such a certificate now, charging the same fee as if they were separate certificates. It is more troublesome to introduce the certification of a series of marks into one document than into separate documents, but still it can be done, and in view of the advantage to applicants that practice has been followed.

2095. But with a fee for each class?—Yes; the only question is whether the Treasury would approve of making an initial fee and then reducing it.

2096. Then the suggestion with regard to fees also is that there should be a smaller fee for change of address being registered in the case of each mark after the first. It was pointed out to us that where a firm has a very large number of marks registered, and changes their place of business, it becomes a heavy tax?—That, I think, would be a very useful suggestion. I may say several details of the schedule of fees were settled very hastily. I had not the opportunity of revising them myself; I was away visiting Chambers of Commerce, that is one of the points on which the schedule of fees might be made more symmetrical than it is.

2097. What do you say as to the next point, with reference to searches, which is also a question of fee?—I doubt if it is desirable to encourage people to come to the office without any fee. You would have people loitering about the office.

2098. I think the suggestion is not that they should not be charged, but that there should not be a separate charge for looking at one book and at another book; that whatever documents you looked at you should be charged once for your searching?—I was confounding this with a suggestion made by another witness. That is also a point in which the schedule of fees requires correction. It was never intended that there should be that separate charge.

2099. The next point to which our attention was called was that where an applicant has to apply to London and Sheffield in respect of the same mark, he has to pay double fees?—That is because there are separate applications and separate searches; the Sheffield arrangement was made for the satisfaction of the Sheffield people. This question was discussed with the Treasury.

2100. The arrangement was made for the satisfaction of Sheffield, but the complaint is that people outside Sheffield have to pay in respect of marks that are registered in Sheffield and London a double fee?—They only register in Sheffield because they have a place of business in Sheffield.

2101. The Sheffield people register in Sheffield, but if an applicant outside Sheffield has to apply to both London and Sheffield in respect of the same mark, which is a mark in the Sheffield class, he has to pay a London application fee and a Sheffield application fee?—Because he has to apply in his character of a Sheffield man.

2102. No; what was suggested was that a Birmingham man would have to do so?—Because he has a place of business in Sheffield.

2103. No, he was not a Sheffield man; but he being a Birmingham man dealt in the same class of goods as a Sheffield man, and of course the Sheffield man would have registered in Sheffield. If he wants to ascertain about a particular mark, he has to make application both in London and in Sheffield, and has to pay double fees?—I think that is a misapprehension of the witness, because the Act says that persons carrying on business in Sheffield, within Hallamshire or six miles thereof, shall apply to Sheffield, and those only.

2104. (*Earl of Crawford.*) Suppose I want a mark, and I want to know if it is registered in Sheffield?—The London office would tell you that on the single application.

2105. That is just what he says they do not. He says he would have to pay a double fee?—It is a mistake. The Comptroller takes note of Sheffield marks as well as of his own marks, and he would tell him at once. The Comptroller has all the marks on record in Sheffield, unless they should be outstanding corporate marks or something of that sort, and that would be an arrangement altogether outside the Act. If an applicant has not a place of business in Sheffield, all his work, as far as it comes under the Act, would be done on a single application to London.

2106. (*Chairman.*) The next suggestion made to us was that before the abandonment of an application was noted at the Patent Office, notice should be given to the agent of the applicant, and failing completion, to the applicant direct. This was suggested on account of cases having occurred in which the agent had received the money to pay the fees, and had not paid them over or completed the work at the office, and the applicant was therefore altogether defeated without any fault on his part; whereas if notice had been required to be given to the agent, and failing his completing to the applicant, the applicant would have learned what had been done, and have saved his mark?—There would be no harm in such a rule. It would cause some additional work, and of course the office has avoided anything like stepping between agents and principals; but I may say that the operation of that section 63 is a matter requiring further consideration. It has not really been brought into distinct working yet. The Comptroller has never been able quite to ascertain how it should be interpreted. As a matter of fact it was considered in 1885, when the work began to fall into this confusion, and it is only applied in this way: If 12 months after the request has been made for the fee we find the applicant has not taken any step, the Comptroller does not find himself at liberty to quote that particular marks as against any mark coming in. I should think there would be no harm in adopting the suggestion of Mr. Johnson in that respect, when that section 63 comes into full operation.

2107. Then the next suggestion is that in section 65 the word "classes" should be "descriptions." The section is, "A trade mark must be registered for particular goods or classes of goods." I do not know whether you think that should be so?—That involves rather the question of whether you should abolish the term "classes." That is what it comes to.

2108. The use of "classes" is convenient, is not it?—Yes, I think it is convenient.

2109. That is to say, if you have not the classes too large?—I think your Lordship's idea of reducing the area of the class is the most practical one, if it can be done.

2110. Then 42 is "In registering under a series "(section 66) the right to vary the mark in any "further form without additional registration should "be given." That you have already dealt with?—Not quite. That is a proposal that in addition to this claim to vary, the applicant should be able to include other classes of goods beyond those which he puts into his claim. I think that is what it amounts to, a sort of cover for a future creation of business within the class; and that seems to me to be very difficult to work. Supposing a man claims a label showing the word porter, and he puts into his claim "malt liquors," and he adds a covering note that in use the label is filled in with words describing other malt liquors besides porter. That is the practice at present. Mr. Johnson's idea is that he should be further able to claim this registration for cider and spirits afterwards, if necessary, and that, I think, would be very difficult to work if I understand him right.

2111. (*Earl of Crawford.*) That is what he referred to in the case of lemon drops and ginger drops?—That would be something of that kind.

2112. That was a special case?—Yes. Then as to suggestion 43, "Section 67 to be varied by including "the plural so as to cover trade marks not printed in "one colour only." I should think that might be an improvement if there was any doubt whether the court would hesitate to recognise "colour" as

including "colours." Then as to suggestion 44, "In "section 69, reference is made to a 'first' advertise- "ment of an application to register; the word 'first' "should be omitted." In section 69 there is a change required, but I should say that "the date of the advertisement" would be the words to insert, not merely to omit "first." It is with reference specially to a sort of case like Manchester, where the advertisement consists of a deposit continuing over a month, and with a notice of that deposit in the Journal, and "the date of the advertisement" would be, I should apprehend, the date of the notice in the Journal.

2113. (*Chairman.*) You agree that the word "first" is a blunder?—Yes, it is awkward because cases arise where a mark is inefficiently advertised by some mistake in printing, and we have to advertise it again.

2114. Then the next as to section 73 is one that you spoke of last time?—Yes. I should like to mention in connexion with that, as I could not find the reference to it at the moment before, that it is practically an embodiment of section 6 of the Act of 1875, which is almost identical with it.

2115. There was no decision, was there, on that section of the Act of 1875?—I do not think there was, my Lord.

2116. The next suggestion relates to section 75 of this Act:—"Section 75 might be modified to the "extent that before the word 'registration' in the "sentence 'Registration of a trade mark shall be "'deemed to be equivalent to public use of the trade "'mark,' 'Application for' should be inserted"?—That is a suggestion also, the importance of which I think would be greatly reduced by the improvement in the despatch of business; as the suggestion stands, it would be somewhat difficult to carry out. If "application" was made equivalent to "user," that would be a sort of *quasi* title to a lot of marks that the Comptroller refuses, but the difficulty is that where the mark is not dealt with for a long time, of course the delay creates trouble outside. Then the suggestion 47, that "the sanction to grant licences so "far as trade marks are concerned should be with- "drawn from section 87" would certainly seem most important.

2117. Then what do you say as to the suggestion about section 91, "that the powers given to Comp- "troller for rectifying slight errors should be some- "what extended, to the extent of revising a claim by "reducing it, but not to enlarge it"?—That, I think, is practically covered by the actual wording of the Act. Under subsection (c.) the Comptroller has power to cancel part of the entry of a trade mark on the register. Under that, where a man wished, in order to avoid litigation, to reduce his claim to particular goods, if it could be done by simply striking out what was on the register he has been allowed to do it.

2118. Then what have you to say to the last proposal, which I believe is borrowed from the American system of allowing a deposit of labels, and affording to them certain protection without giving them all the rights of trade marks?—I should fear that it would produce some confusion with trade mark work. I do not know how far the validity of the deposit at Stationer's Hall has been settled, or what its effect is; but I would suggest that it might be worth while seeing how far that could be improved, and to let the labels be deposited there as a copyright question; but questions of copyright are distinct from questions of trade mark registration under the present system, and I should doubt the expediency of mixing them.

2119. That, I think, covers the whole of the specific suggestions, except those that you have reserved for separate treatment?—Yes, my Lord.

2120. Then we revert now to No. 1, the question as to the fees?—I may mention as to that, my Lord, that the great difficulty under the Commissioners of Patents was the want of a sufficient staff. There was a good deal of doubt as to how far the system would permanently demand a staff. It was always undermanned from the very beginning, and in latter years it became very much worse, until the very substantial services we got from the Board of Trade giving us the proper supply of staff. There was a proposal at first made, I think, to give two additional hands, and I represented to the President that that was quite insufficient to enable us to cope with our ordinary business without making provision for any possible increase of work. Then I was placed on the Treasury Committee with Mr. Lack to settle the question, and they assented to an increase of seven, I think, to our staff, which enabled the Comptroller to attain something like the standard of despatch which Mr. Chamberlain desired we should keep up to in theory of returning applications by post. During the early part of 1884, every week there were some applications actually dealt with by return of post, and all applicants had the Comptroller's opinion about their chances within a week. It was especially with a view to such a system that the application fee was reduced from 1*l.* to 5*s.* There had been under the Commissioners of Patents a system of shilling searches. People all over the country could send up a post office order for a shilling and get a search made in the office. That did not pay the office. The labour was too great. There was also this further difficulty, that when they were told on the shilling search that they could get the mark, they perhaps neglected for a week or two to make their application, and somebody else came in in the meantime, whereas by the making of the application in the first instance, if the search was in their favour, they got their date, and the mark went on. A very important work done by Mr. Lack in those years was to simplify the papers on application. The detailed description in the application form and the declaration was swept away so as to carry out, as far as possible, the theory that an honest applicant should have his business disposed of promptly, and disposed of, if he liked, by himself without the necessity of recourse to solicitors or skilled agents in any way. That work was carried still further by the Board of Trade. They authorised Mr. Lack and me to arrange with Somerset House for the distribution of all the patent forms at the local post offices, so that a man had the opportunity of dealing with his business himself if he was sufficiently intelligent and cared to do so. I may shorten what I have to say by reading a memorandum which I sent to the Board of Trade in December last on the subject:—"It is submitted that there is "urgent need for an increase to the clerical staff of "of the Trade Marks branch of the Patent Office. "Since the Patents Act, 1883, came into operation, "the number of applications has increased 156 per "cent. More than 10,000 applications have been "dealt with during the last 12 months. The work "in connexion with these documents may be divided "into main portions following: (1.) Receipt of appli- "cations, and their examination and advertisement; "(2.) Registration of trade marks duly advertised, and "issue of certificates. It is as regards the first por- "tion of this work that some addition to the staff is "specially required. In order to facilitate the use of "the Trade Marks Registry, the Board of Trade "arranged in 1884 to have application forms on sale "at every post office, and the applications thus "brought to the tradesman's door, Mr. Chamberlain "proposed to have dealt with in the Patent "Office by return of post, and during 1884, "some applications every week were disposed "of in accordance with this standard of despatch, "and all of them within five or six days from their "receipt at the office. This year, owing to the large "increase in the number of applications, an applicant "has to wait six or eight weeks before he can obtain "the opinion of the office upon any proposed mark. "It may be mentioned that no search is made by the "office except upon an application to register. Pre- "liminary searches may be made by any of the "public, but traders in the country, who have no "agents in town, cannot make searches without "coming up to London themselves. To meet their

Mr. J. L. Whittle.

11 May 1887.

"convenience the original fee on application was "reduced in 1883 from 1*l.* to 5*s.*, and the main "portion of the fees charged was shifted to the "registration stage; but this scheme of making the "application stage serve the purposes of a pre-"liminary search is defeated when applicants have "to wait so long to know the result. When an "applicant was able to ascertain within a week "whether his choice of a mark was a happy one or "not, he did not mind a refusal, and sent in a second "application or perhaps a third; but now, when he "has to wait nearly two months for a definite answer, "he often concludes he is successful, and proceeds to "stamp his goods, and incurs other expenses before "he is informed that his mark cannot be accepted. "When the provision for the clerical staff was under "consideration in 1883, two objects were kept in "view: (1.) What was required for the proper dis-"charge of the work at the then rate of application; "(2.) What might be needed to meet any increase in "the work. The staff under the previous Trade "Marks Registration Acts had been so insufficient "that on the 1st January 1884 there were more than "200 applications, some of them made two years "previously, upon which the decision of the office "had never been notified to the applicants, and the "delay resulting from that state of things contributed "largely to the unpopularity of the Patent Office in "Manchester. The joint committee of 1883, consisting "of Mr. Ryder, Mr. Stoneham, Mr. Lack, and Mr. "Whittle, estimated for an increase of business up to "25 per cent. In the course of 1884 the increase "rose to 40 per cent., but the personal exertions of "the staff in giving time after hours enabled the "office to keep pace with the work, and in 1885 "the Treasury consented to an additional hour's pay "per day to all clerks of the lower division, but the "increase of work went on, and in discussing the "estimates last winter certain additions to salary were "sanctioned by Mr. Calcraft, but this recommendation "was subsequently held over. The much greater in-"crease which has since taken place will, it is sub-"mitted, make any delay now in providing for a more "speedy discharge of the work a serious inconvenience "to the public." "It may be further noted: (1.) That "the increase of work has been continuous since 1883; "(2.) That so far from this increase being likely to stop "or to fall off next year it will probably proceed still "further if the hope of trade revival prove well "founded; (3.) That every year's addition of 6,000 "or 7,000 marks to the register proportionately in-"creases the labour of search on each new application; "(4.) That the actual addition to Treasury receipts "under the new Act amounts this year to nearly "3,000." That representation the Board of Trade thought they ought to hold over in view of your Lordship's work here.

2121. Would it be possible for you to obtain an efficient additional staff?—Yes.

2122. They would not have any experience of trade marks, would they?—No, but they would work under the eyes of other people, and of course the longer an increase is deferred the greater difficulty there will be in training the men. If we had had additional men earlier it would have been better, but we should be able to put them to work under the eyes of other people. What I asked was for one upper division clerk and one lower division clerk to be at once added to the staff. That was the very lowest estimate I could make for carrying on the work. There may be a question how far this increase of work is due to a number of these applications for word marks which the office could not go on accepting. I knew that this difficulty as to increase of staff was mainly due to the state of public affairs, and I wished to make my demand as modest as possible. I may add that the delay which I mentioned in December has increased since. It increases in a regular proportion because the increase of applications has gone on quite as largely; and, as our staff are employed in writing apologies for delays, and in dealing with exceptional cases, and so on, that tends to accumulate the work and develops the delay. But, of course, that was not a matter of controversy with the Board of Trade like this new procedure. It was a difficulty caused by the condition of public business.

2123. Are there any other points with reference to the staff or the fees to which you wish to call attention?—Then the question of word marks I should like to deal with. The provision of the Act of 1883 admitting words as new marks was one entirely new. The office had some experience of words under the old Act in this way, that special and distinctive words in use before August 1875 were admitted as marks, and therefore the question of words was under consideration from time to time; but I know that opinions varied very much about it, and almost everybody who looked at the question had some theory of his own. Therefore, I did not venture to press any theory of my own. I thought it was work that the maxim *solvitur ambulando* had very much better apply to. All that I asked was that certain lines should be kept, and that if possible there should not be too much changing. Early in the year the Comptroller accepted a claim for "Hygieo-electro" as a fancy word for medical appliances, and I pointed out to the Board of Trade at the time, that if they went on to register descriptive words and dictionary words, the public being ready to take advantage of it, and agents being ready to oblige them, we should be registering the London Directory and the dictionary right off. Two things were to be considered; first, the danger of reducing to almost a vanishing point what could be protected, and which the Comptroller was bound to protect under section 72; and secondly, the danger of encouraging litigation amongst applicants. Subsequently the Board of Trade directed that a certain number of words might be accepted, such as "Champion," "Unique," and words of that sort. Then a great cloud of words came in, and there was a mark which the Comptroller objected to "Health-belt" for medical appliances, but he was persuaded at a hearing to take it as a combined word altogether. As soon as the mark was accepted it was of course advertised as being registered as separate words. Various consultations were held on the question of descriptiveness. One distinguished adviser of the Board of Trade was strongly of opinion that we must rely on the principle of descriptiveness. Descriptiveness properly dealt with in its full sense applies to a great many of the words which are recognised as old word marks, like "Aeilyton." "Aeilyton," if you go out of the English language, is distinctly descriptive. It describes a very valuable quality of the ink. "Zoedone" in the same way was a descriptive eulogy for mineral waters; so that the point that stress is laid on in many decisions did not altogether help us over the difficulty. I think one consideration that lies at the base of the whole question is that word marks are necessarily weaker marks than devices; if I may borrow a term from another branch of law, that a word mark is almost necessarily a defeasible sort of mark, unless it is words which are taken from mythology, such as "Apollo" or "Minerva," which are really the names of devices. If it becomes the name of the goods, and the right to make those goods passes to other people, the property in the mark is gone; and that quality of a word mark is, I think, indicated in some observations of Lord Justice Mellish in Siegert *v.* Findlater, the Angostura Bitters case. He points out that they protected "Angostura," which was a geographical word at the time.

2124. (*Lord Macnaghten.*) Do you say Lord Justice Mellish?—Yes.

2125. I do not think that case was before him; I think it was before Lord Justice Fry?—I have not the report here, but the observation I wished to refer to was that if the secret of making these bitters became public property the value of the mark would pass away, and that is one of the questions which I think must be kept in mind in attempting to

deal with these things, that you are dealing with a weaker kind of trade mark altogether. That was the ground on which the late Master of the Rolls deprecated the registration of words for new marks, and was supposed to ignore them. On the other hand, it is impossible to ignore, in dealing with these trade mark questions that advertisement is a tremendous part of modern commerce, and that the demand for these trade marks is partly in view of the advertisements of the firms springing into existence, and wishing to recommend their goods all over the world. So that the advertisement question, as far as it is possible in working out the legal machinery must, I submit, be taken account of. In that way the American cases were, of course, largely in the view of the gentlemen who framed this Act. American opinion is very unsettled on the question, but they do there, as we all know, apply the system of advertisement with tremendous energy, although they produce some of the best goods in the world. Therefore, I have urged, as against Sir Thomas Farrer's view, who took Sir George Jessel's view that word marks were great rubbish, that one should try to find some means of recognising the demand for advertisements in connexion with words, but the difficulty of it has been very great. I should have liked to have read to your Lordships a memorandum on this which I submitted to Sir Thomas Farrer, in which I tried to classify the various descriptions of words. It was especially in connexion with the rest of what I was about to suggest about Manchester.

Mr. J. L. Whittle.

11 May 1887.

2126. If that memorandum were handed in and printed on the notes it would probably save us a good deal of time, because we could then put any questions arising upon it?—I will hand it in.

2127. I suppose, except as to the Manchester question, that substantially would conclude what you have to say?—I think so, my Lord.

(Adjourned to Saturday at 12 o'clock.)

Board of Trade, Whitehall.

Saturday, May 14th, 1887.

PRESENT:

LORD HERSCHELL.	The Rt. Hon. A. J. MUNDELLA, M.P.
LORD MACNAGHTEN.	JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. J. LOWRY WHITTLE recalled, further examined.

Mr. J. L. Whittle.

14 May 1887.

2127. (*The Witness.*) I understood that you wished me to go into the questions raised on Mr. Bailey's evidence to-day. I might perhaps, in the first instance, hand in a copy of the letter I mentioned at Question 1778 as to the course adopted under the Commissioners of Patents of having the Comptroller represented in courts of law (*handing a letter to the Chairman*). The six heads mentioned by Mr. Bailey, I think he agrees, resolve themselves into this: the third and sixth may be taken pretty well together. The second becomes the principal one: "Trade marks "which are calculated to deceive by reason of their "great resemblance to marks already registered." That divides itself into two periods, and perhaps the easiest plan will be to go through the different cases as Mr. Bailey takes them and arranges them. There is a period prior to that change in the view of the Board of Trade which I have already mentioned. I should not be prepared to defend many cases after that at all. My correspondence with Mr. Bailey I propose to put in. He understands that the Patent Office shelters itself under the reading of section 82 adopted by the Board of Trade. I think Mr. Mundella knows that in my own view, since the directions of 1885, the Patent Office were proceeding in violation of the law of 1883, but that we were bound by section 82 to follow that course. That will come out later in taking each case as it proceeds. As regards 284, what Mr. Bailey says is, he spent a great deal of time and trouble in educating the Board of Trade. I should think there is a good deal to be observed upon that. The Chamber of Commerce have occasionally given us great help; but starting with their own views, which they have never abandoned, that trade mark registration for cotton marks was a mistake, they have often failed to give us help which would have been very useful to the office, and which the office would have been very glad to have had. I may mention my going down to Manchester at the end of 1884, when I thought things were getting into a more favourable shape. Mr. Chamberlain directed me to visit Manchester, and to inform the Chamber of my intended visit, and ask if they would favour me with any observations. The secretary of the Chamber told me he would lay my letter before the Chamber. That was early in December, but I never had any further answer to that proposal. When I was in Manchester, I called on the gentlemen who had always received me with great courtesy there, Mr. Bailey amongst them and had some discussion of the questions. I mention that not as a personal complaint, but as indicating that opportunities, which the officers would have been glad to have of learning these things, were not always given us by the Chamber. That was followed by a deputation to Mr. Chamberlain, and this deputation I shall recur to later on, as showing the different aspect of the Manchester complaint in April 1885 from that which it takes now. 295 is not quite accurate as regards saying that the name of the firm is always put upon their marks. I find a great many marks without the name of the firm, but as a general rule it is quite true that Messrs. Ralli rely upon having the name as part of their marks. Then 304 is as to bicycle marks. Mr. Bailey, in his subsequent answers to your Lordships, considerably modified his objection that a bicycle was a leading idea. He admitted that a bicycle with a man riding it and a bicycle with a frog were separate ideas, and that is the view which the Patent Office has practically taken, that where you have a caricature of a mark you have a separate idea, and an element of distinctiveness which enables the Comptroller to adopt it. That is what, I think, Mr. Bailey, in his discussion of the question afterwards, comes back to.

2128. (*Mr. Hutton.*) Mr. Bailey's discussion on the bicycle question was as regards the tight rope, I think, being put under the bicycle; that was his complaint?—That was a mark which you will see

Mr. J. L. Whittle.

14 May 1887.

from the number was passed in 1885 or early in 1886, and under the series of decisions in Hughes' case, which I want to bring under your notice. I think he is perfectly right. I think that is a case where the office would have been wise to refuse that mark in view of the loose manner of using these uncertain forms. The rope might disappear.

2129. (*Mr. Mundella.*) The rope is not distinction enough?—No; that was dealt with in May 1886, when we were acting on the Board of Trade line, which individually I could not follow. All that Mr. Bailey says in 309 about the character of the stamp is what I have endeavoured to keep in view. Of course it may be, and is sometimes, pushed in Manchester,—theorising on the subject,—to too great a length, because the protection given to the registration of a mark, is for the mark as deposited and registered, and if a man metamorphoses his mark altogether, the office cannot be responsible for that. I think the change likely to arise in the ordinary use of a mark ought to be kept in view, and the courts have directed us to keep it in view, with reference to such a case as Jelly, Son, and Jones, as to how a mark may become modified in usage by the practice of the trade, and so on. Then there is a question raised as to headings, 306. That is a matter, perhaps, to be discussed later on, but I would say there has been a good deal of controversy with the Patent Office upon that, whether the Patent Office was bound to take a heading. In this particular case referred to of Mr. Hoyle's, it is admitted it was an oversight, there was no intention to take headings, but it has been pressed on the office that they were really straining the Act in favour of a trade view.

2130. (*Chairman.*) Do you mean in refusing or taking headings?—In refusing headings. I have myself examined carefully, I will not say all the 40 volumes of headings that we have, but the greater number, and I should say that they could be distinguished one from another, but it would be a much more difficult thing than an ordinary device. There is this against headings, that as the Manchester trade uses them they are really marks, not for the primary consumer, but for the middleman.. I think Mr. Hutton would agree with me in that. That is not the full meaning of a trade mark, but that they could be distinguished one from another with proper care, I think, could be shown. On the other hand, the people who are interested in these headings, contend, like Mr. Hoyle, that merely discriminating by colour, or by the number of picks, is not sufficient, that you must discriminate by the general effect of the particular heading.

2131. As the law at present stands, so far as these headings are distinguishable by colour, which seems to be the common case, you could not register them, could you?—You could register a large number as alternations of light and shade.

2132. That is to say, you could register them as a device which might be used in any colour?—Yes.

2133. But you could not register them so far as they were dependent upon distinctions of colour?—That is what the Patent Office has relied upon as disposing of the question for the present.

2134. (*Mr. Hutton.*) How would you register a four-line heading?—It would depend on the alternations of light and shade to some extent. A great many in these 40 volumes are, I admit, not distinguishable, but a certain number of them, I think, are, as regards thick lines and broad lines, and so on; but it would be a special kind of thing, it would require an expert, specially for that purpose, to deal with them in our office, and I think if colour were recognised in the Act, there ought to be a special charge for them, if the people who are interested in headings consider it worth while. It would be much more difficult to examine than anything else.

2135. How is it possible to distinguish one heading from another?—I ought, perhaps, to have one of the volumes here; that would be the only way to show it.

2136. Where would you begin? Perhaps there are over 100,000 headings used in the trade. I know one manufacturer who has over 6,000 headings of his own; how could you possibly begin to register?—I would offer you a case which I examined with Mr. Fry (I forget who the applicant was) of the headings referred to in the volumes as likely to clash, and the Comptroller considered that he could distinguish that as a special heading, whatever might be the value of a heading.

2137. (*Chairman.*) That is to say, of course, some headings would be distinguishable from others, but if colour is excluded it would be very difficult, would it not, because it would depend, no doubt, on the distance between two lines and three lines; that distance might vary a little, or it might vary considerably, and yet the two would be really indistinguishable?—There are most minute variances. I agree with the committee of experts that they are a totally different class of marks from the others, and very difficult to deal with. All I say is, it is one of the controversies where the office has to stand fire from different sides, and if it is right to go into these very minute differences for the sake of marks familiar to a particular class of people like the middlemen, I think it is practicable, as far as my observation goes.

2138. Do not you think if you introduce headings for any practical purpose, and to any really substantial extent, you must introduce the system of making colour part of the registration; I mean for the purpose of the headings?—Yes. I think a large number of headings of these old marks, as shown by the committee of experts, might be taken irrespective of that. It would only be a portion, certainly. Perhaps your Lordship would like me to send you one of those cases that we examined in 1880.

2139. (*Mr. Hutton.*) My only object was to know whether you could define how it was possible to distinguish headings?—I do not know that I can state propositions about it.

2140. To describe a heading?—We do not require people to describe marks.

2141. Not being able to register colour, how can you describe the different shades of blue and red?—A dark shade and a light shade.

2142. A dyer one day will deliver a yarn one shade darker than another?—Yes. I think I have a claim here that the Comptroller considered a good deal, and afterwards, with the help of the Manchester Chamber, succeeded in refusing. It was that selvedge case, Lister's, which is probably familiar to you. "The "selvedge consists of a stripe the same colour as the "piece of pile, a stripe lighter than the piece of pile; "a stripe of the same colour as the piece of pile." Then it goes on through the whole. Technically that seemed to be within the Act.

2143. That example is not a heading; it is a selvedge?—It is a selvedge; but the same procedure might to a certain extent be applied to headings.

2144. (*Chairman.*) But that depends upon colours?—Yes, it does, in that case.

2145. (*Mr. Hutton.*) Was this registered?—That was a mark that was refused.

2146. It was put on the table?—It was put on the table after a good deal of conference with the Board of Trade; and finally, with the help of the evidence supplied by the Manchester Chamber, the court decided to refuse it.

2147. They appealed, did not they, to the law courts?—I think an appeal was entered, but I do not think it was followed up.

2148. (*Chairman.*) It went before the courts?—It went before the courts.

2149. What is the next point?—I would call attention to the answer to Baron de Worms, No. 323. Mr. Bailey is asked whether he makes a search in the Manchester office before adopting a mark, and he points out that he does not always do so.

2150. (*Mr. Hutton.*) I suppose you are aware that a good many houses never think of inquiring?—Yes.

2151. They make new stamps for stamping goods and never think of inquiring whether a similar

design is registered?—Yes, I believe that is the practice.

2152. As a manufacturer, I should be very glad if one could register headings, but I have tried, and failed to see how it was possible to do it?—I confess they are not a class of marks that I should desire to have. I should be very much in the hands of experts in dealing with them.

2153. The Board of Trade would be in a greater difficulty still, I am afraid?—Yes. When it was intimated that the headings must ultimately depend on what Mr. Hoyle called the effect of the heading, I felt it was totally different. To return to the question of search in Manchester, the Manchester trade do not try to work the system such as it is. Many houses do not search before adopting the stamp. If the Manchester office is worth keeping up, one would think that would be one of the advantages which the trade would like to have.

2154. The reason why, as I understand, they do not do it, is that they think it is perfectly useless to register, because almost anything is registered now by the Board of Trade?—That later period of the Board of Trade I shall come to. Then question 335 refers to sateens. I am informed on inquiry that sateens are not pile goods. I do not know whether, as Mr. Hutton is here, he would like me to refer to those affidavits I mentioned to your Lordship in the case of Mann's application, on the distinction between pile goods and non-pile goods. I mentioned the registration of pile goods alone in connexion with the question of classification the other day; and I should like to read over the names of the gentlemen whose affidavits the Comptroller relied on.

2155. Relied on for what purpose?—For distinguishing velveteens as a description of goods. The applicant was Mr. Mann, and he makes an affidavit stating: "That the manufacture of cotton "pile fabrics is an industry totally distinct and "separate from the manufacture of other cotton piece "goods. That none of the aforementioned firms,"—the firms to whom we referred as having their names appearing in the B list on similar marks,—"has ever "used the word 'Sanspariel' either alone or in com-"bination with a device as a trade mark for cotton "pile fabrics to the best of my knowledge and "belief." Then he is supported by an affidavit of Mr. Yates of the firm of Livsey, who are one of the firms whose names appeared upon a somewhat similar mark showing the same word. He says: "That my firm "has carried on business as bleachers of cotton piece "goods for 20 years and upwards. That my firm is one "among others of the United Bleachers' Association, "on whose application in 1876 the Manchester "committee of experts placed 'Sanspareil' in the "second class for cotton piece goods. That the "fancy name or trade mark 'Sanspareil' had been "used by my firm for a period of 20 years prior to "1876. That the business of a bleacher of cotton "piece goods consists in bleaching calicoes and other "piece goods, exclusive of cotton pile fabrics. That "the trade marks used by bleachers do not relate to "velveteens, velvets, nor pile fabrics of any kind, "nor to coloured goods of any kind, but to bleached "calicoes only." Then there is an affidavit of Mr. Reiss, of the firm of Reiss Brothers, whose firm was represented on the committee of experts. He says: "That my firm had used the fancy name or trade "mark 'Sanspareil,' combined with the name of my "firm and a number, the same being in reference and "relating to cotton piece goods, for a period of one "year prior to the year 1876, as stated in application "form lodged at the Patent Office in 1876 by my "firm. That my firm has not used the fancy name "or trade mark 'Sanspareil' in reference and relat-"ing to cotton piece goods consisting of cotton pile "fabrics, such as velvets, velveteens, velvettas, velvet "cords, thicksett cords, eight-shaft cords, Genoa "cords, corduroys, and moleskins." Then Mr. Robinow, of the firm of Gottschalck and Co., makes a similar affidavit. There are several others, up to the number of 10, from Kershaw, Pickford, and Co., Melland and Coward, Collier and Co., &c. Those affidavits were made in the case of 38,447.

2156. Those affidavits do not refer to this mode of registration. It is the separation of the classes?—The separation of the description of goods.

2157. An ordinary piece of satteen submitted for registration you would take as an ordinary piece of cotton goods?—Yes.

2158. Talking of registration of headings, should you see a difficulty in registering a heading under the designs part of the Act as a design?—Those figured headings were for a long time registered as designs; and if the heading is decided not to be a trade mark, and they could be distinguished—I think they can sometimes—they would rightly be admitted; but it is a rule of the Patent Office, in which they have been supported by the Board of Trade, not to register anything as a design that may become a trade mark, as the two systems would conflict; but this sort of headings was always registered under the old system.

2159. Those are dhootie borders, are they not?—Yes.

2160. Those would not come under the class of "Headings"?—They are not headings in the ordinary sense of the word.

2161. Those can be registered now under the Designs Act?—I am not sure that we have had any under the present Act. They do not register them to the same extent they did.

2162. (*Chairman.*) But those could be registered as designs?—I should think so.

2163. (*Mr. Hutton.*) I think Mr. Bailey gave us evidence that several patterns of dhooties had been registered, but his firm declined to register them?—Yes, that practice has diminished very much. Then the statements in 340 and 341 are views the office accept. It is the mode of carrying them out that is the real difficulty. 343 is really where controversy arises. 381 depends on the intelligence of the buyer. That is a point in which Manchester, I think, takes a somewhat extreme view. You must assume a certain degree of ordinary intelligence in the usage of all trade marks. My own experience, as far as it goes, is that people living in sunny climates are rather more acute in seeing differences between one object and another than they are in British climates. But general principles of that kind should not be relied on.

2164. (*Mr. Mundella.*) Are they more suspicious too?—Yes.

2165. (*Mr. Hutton.*) He only sees the distinctive feature, I suppose?—I am all for considering the distinctive feature of a mark. That is a matter which can only be illustrated by reference to certain things. Then there is the question where Mr. Bailey points out, returning to his point about how a mark may be used, that a frog may be ultimately brought, more or less, to resemble a man. That is the point where I think one gets to speculate too much about the use of a mark. If the frog is changed in the pressing of the stamp so as to make it like a man, it ceases to be the mark that is registered. I think his later view, as expressed to Lord Herschell, is the sounder and more practical one on which we could work. 357 I agree with. Well, then comes 360 and 376. There were three marks of dyers. The first represents the dyeing of yarns. Mr. Fry agreed with that. The second one represents dyeing piece goods. That is No. 36,359. There was a good deal of consideration as to what we should do with that. The number of figures is not the same. The general effect of the picture is not the same, and the articles dealt with, though there was a process of dyeing in each, made it, in the Comptroller's view, sufficiently distinct to pass it. But he would never, in view of that, and the first one, No. 33,753, have thought of passing No. 53,034 if it had not been for the directions he received from the Board of Trade.

2166. (*Chairman.*) What directions do you refer to?—Directions about taking the mark as a whole;

Mr. J. L. Whittle.

14 May 1887

as illustrated by Hughes' case—by the co-operative case.

2167. Directions in writing, or verbal directions?—They were directions in writing, which I will read to your Lordship as I go on, given during the course of 1885, after a very long discussion, not in consultation but in writing, between myself and Mr. Murton and Mr. Calcraft. Then I come to 390. That is a case depending on the decisions in Hughes' case. The god tickets are very difficult to discriminate. We should not have been prepared to pass this mark, 55,716, in view of 22,284, which was cited against it, if it had not been for the reasoning adopted in those appeals of Hughes'.

2168. Is Hughes' case an appeal to the Board of Trade?—Yes. Then there is an observation of Mr. Bailey's at 394 about the ignorance of natives about mythology. That is a principle that I think may be pushed too far. My own impression is that the natives distinguish pretty well between one god and another.

2169. Do you think a Mahommedan in India would know the distinctions between Hindoo native gods?—I should think they would probably know whether it was Siva or Vishnu. Native god tickets are a considerable difficulty because they assume great varieties, and the difficulty is added to by the variety of names. Most of them are called Myrionimous, having thousands of names. I am assuming the ordinary recognised type. The figure of Siva is a very distinct one. 59,191, the case of wells in the Desert, is also a case where, though I think there were arguable differences, the Comptroller would not have passed the later mark without consulting the original owner, if he thought that he was at liberty, on consultation with the original owner, to found a refusal upon the resemblance; but in view of what had been done in the course of 1885 he did not consider he was at liberty to do so; and, therefore, to raise a question or take the opinion of people whose advice he could not follow, he thought would be only wasting their time. As regards the football mark, of which the latest is 46,920, the question is somewhat different. There are registered two marks of single football players, one by consent of the other. They are not identical, but closely resembling one another. Then there is 37,371—Chinese players, with the game of football played from the knee; and that the Comptroller thought he was at liberty to accept, notwithstanding that the single figure was registered; and he also accepted, further on, a picture of the English football game as representing a whole scene. Then this mark of Messrs. Framjee Sand's represents an Indian game, apparently—an Indian scene of football played from the knee. That distinction between one Oriental type and another is one which I admit is a very dangerous one. I think the practice was growing up under the Commissioners of Patents in 1883 of trying to distinguish each Oriental nationality; and I pressed strongly upon the Comptroller, and upon the Board of Trade subsequently, the great danger of that; and the distinction practically adopted was this: European characters, native characters, and Chinese characters. There was at one time distinction drawn between a Malay and an Indian, and a Japanese and a Chinese. The Chinese features and Chinese costume make a very distinct feature generally, and that distinction, I think, has been recognised in one of the English courts. It is a legitimate question whether 46,920 should have been accepted without the consent of 37,731. It was in the later period of 1885 when our practice was getting somewhat unsettled.

2170. (*Mr. Hutton.*) That was the case, was not it, in which the parties themselves withdrew their own stamp afterwards to avoid litigation?—Yes, it was withdrawn.

2171. A lawsuit was commenced?—I have heard so.

2172. That is simply on the question of nationality?—Yes. Then I would refer to the hen case. There is a slight misapprehension of Mr. Bailey's, as to the grounds on which the application was dealt with. It is treated as if it were accepted because of the name. That is not the way in which I should be prepared to state it. The mark was accepted on account of the difference between it and other hen marks; but, keeping in view the point that Mr. Bailey raised as to the differences introduced into marks by the carelessness of the engraver, Mr. Fry suggested—it was suggested in conversation with Mr. Fry, at any rate—that the applicant ought to be fixed to the character of his picture with the nest under the hen, by putting the words "Sitting hen" on, but it was rather as a caution to him not to fritter away his mark than because we took it as sufficiently distinguished by the words. That is the mark as finally accepted (*handing in same*).

2173. (*Chairman.*) That was the sitting hen as distinguished from other hens, was it?—It was to fasten him to the particular position.

2174. The reason you accepted it was because you considered the sitting hen was different from any other hens?—Yes. *These* are the only three marks which practically we thought conflicted with it (*handing in same*).

2175. (*Mr. Hutton.*) Are there any registered hens?—There are no registered hens.

2176. The committee of experts, I suppose, has refused to register them?—They put all the cocks and hens together; and we have a whole volume of cocks in the B list.

2177. (*Chairman.*) The distinction is rather fine, is not it, between a sitting hen and a hen standing up?—That may be.

2178. (*Mr. Hutton.*) Is there a sitting hen on the B list?—No, there is nothing suggesting anything but cocks—game cocks and fighting cocks—except those three marks. Then we come to the skunk case, which Mr. Bailey has commented on. That was a case as to which I thought the mark might be frittered away, just as in the bicycle case; and neither the beaver nor the skunk being, perhaps, familiar to the users of those marks, I thought it was as well to ascertain what a leading house using one of these beaver marks thought about the question, and suggested to him that if he wanted his skunk mark he had better ascertain their views, and they consented.

2179. (*Chairman.*) I think we remember that. It was a somewhat indifferent representation both of the skunk and of the beaver?—Yes.

2180. (*Mr. Hutton.*) The owner of one beaver was asked and not another?—Yes, there was that informality about it, that there were a lot of other beavers. The course I should have taken in other classes would have been to have written and asked them what they thought about it. Manchester merchants make these communications themselves generally. It was put "Consent," though it was really a consultation with one of the owners.

2181. That instance was similar to that of the hen; but all beavers being in the B list, the owners of beaver marks ought not to have been applied to for the registration of a skunk?—There was a different element; there was the particular situation of the hen, and the addition of the nest: that was the difference.

2182. The impression on my mind at the time was that it was a question of the severity of the office rather than the laxity?—Quite so. Well then, as to 441; there is a question which is constantly turning up as to disclaiming words. We have been constantly asked to insist on applicants disclaiming ordinary words appearing on their marks, and that is a practice which the Comptroller has always resisted. He does not follow it. He never asks for the disclaimer of a word unless, according to his notion of the law, it can possibly become some special property or some distinctive element of the mark. To require applicants to disclaim "First quality," or words of that kind, would be a frivolous interference.

2183. (*Chairman.*) Under what authority do you ask for the disclaimer?—The disclaimer of words

upon old marks and new marks is regulated by section 74, I think. It is sub-section 2. "The applicant "for entry of any such common particular or par- "ticulars must, however, disclaim in his application "any right to the exclusive use of the same."

2184. There seems to be some conflict between section 64 and section 74 as to new marks. Section 64, sub-section 2, would allow to be added to a distinctive device any letters, words, or figures, or combinations of letters, words, or figures. Then section 74, sub-section 1, "Nothing in this Act shall be "construed to prevent the Comptroller entering on "the register, in the prescribed manner and subject "to the prescribed conditions, as an addition to any "trade mark." *b.* "Any distinctive word or com- "bination of words, though the same is common to "the trade in the goods with respect to which the "application is made. (2.) The applicant for entry "of any such common particular or particulars must, "however, disclaim in his application any right to "the exclusive use of the same." I suppose they would be read together in this way: that that would be a limitation upon sub-section 2 of section 64?—That is the way it has been read.

2185. You may not add as of right any letters, words, or figures, because, if the letters are "common "to the trade in the goods with respect to which the "application is made," then there must be a disclaimer?—Yes. that is the way in which it has been interpreted. It has frequently been the subject of applicants grumbling at being asked to disclaim, relying on that sub-section 2 of section 64. I would point to Mr. Bailey's language, in question 441, as illustrating a conception of the working of that which has been a frequent subject of correspondence with Manchester; it is a trade notion which, I contend, indicates their being over-sensitive about the whole work of trade mark registration. As I mentioned before, there are volumes—large volumes—of words in the B list, consisting simply of these ordinary words. 445 is an answer of Mr. Bailey's, which shows how practical he is when he is pressed. He says, "there is no reason why the name of 'the "Frog and Bicycle' should not be 'the Frog and "Bicycle.'" Some owners want to exclude everything that could possibly be covered by an invoice name. Then there is 451. There is a mark referred to of Runjeet Singh. That is another point in which I think the action of the Board of Trade is defensible enough. There are mounted horsemen and Oriental horsemen in the B list; taking *that* as a conspicuous picture, and supposing it was used properly as registered, the Comptroller thought he was not at liberty to refuse it (*handing in design*) on the assumption that that historic person might be more or less known in the East.

Mr. J. L. Whittle.

14 May 1887.

2186. (*Mr. Hutton.*) They refused to register that stamp without the words?—I think not; I think it was sent to us with the words.

2187. They would have refused it if that stamp had been presented for registration without the words "Runjeet Singh"?—I should certainly have asked whether they could identify it with some particular person.

2188. It is one of a class of stamps which were refused by the committee of experts?—I do not think there was anything so good and well brought out as that. There were a number of mounted Oriental personages refused by the committee of experts, but I do not think there was anything so distinct as that. Then I take question 464. There are a number of cases in which I am compelled to differ somewhat from Mr. Bailey. The duplication of the same object, or multiplication of the same object, the Commissioners of Patents always instructed the Comptroller, did not make a new and distinct mark; but where the object is not the same as another object, where it is worked up in a particularly ornate way, he has accepted, and continues to accept it. *This* is the original mark of Messrs. Ralli, a single basin. When an applicant applied under 28,635, for that, through it was filled with fruit, the Comptroller thought he ought not to pass it without the consent of the owners of *this*. When an applicant came for *that* he thought he could not identify it as a repetition merely of Messrs. Ralli's mark or of the other, and he accepted that as distinct.

2189. (*Chairman.*) That is three basins?—Yes, worked up in that ornate form.

2190. Would not a good deal of the ornate form disappear in the printing on stuff?—*This* is claimed as a ticket. It was not claimed as a stamp. That might be a question for the courts.

2191. (*Mr. Hutton.*) Did Ralli Brothers refuse their sanction?—They were not asked for their sanction. That is what Mr. Bailey refers to. It was registered without their consent.

2192. Mr. Bailey referred to another firm whose sanction was asked?—Yes, the sanction was asked for this four-fan border. That is the mark I think of the Galbraith's. Borders are generally considered as common. Still, when a peculiar border nearly identical with this was applied for, we thought it ought not to be accepted without their consent. That is one of the cases in which, apart altogether from the new process of the Board of Trade, there would be a certain amount of controversy still with the Patent Office.

The witness withdrew.

Mr. HERBERT HUGHES called in and examined.

Mr. H. Hughes.

2193. (*Chairman.*) You are one of the firm of solicitors to the Cutlers' Company, and are secretary of the Sheffield Chamber of Commerce?—Yes.

2194. Your partner, Mr. Wilson, is the law clerk to the Cutlers' Company?—Yes.

2195. You are therefore well acquainted with the working of the Act so far as Sheffield is concerned?—Yes.

2196. What is the first point you wish to bring under the notice of the Committee?—The first point is in connexion with the jurisdiction of the company at Sheffield at the present time. At the time of the passing of the Act in 1883, the desire was to insert in the 3rd sub-section of section 81 a liberal construction of the words of the Cutlers' Company's own Act of 1860, and to give them jurisdiction in many hardware goods whether with or without a cutting edge. The state of things which is produced is unfortunately this: that the 3rd sub-section of section 81 hardly goes far enough. It is at present: "An application "for registration of a trade mark used on cutlery, edge "tools, or on raw steel, or on goods made of steel, or "of steel and iron combined, whether with or with- "out a cutting edge, shall, if made after the commence- "ment of this Act by a person carrying on business "in Hallamshire, or within six miles thereof, be "made to the Cutlers' Company." The position is this: that a man may be carrying on business in Sheffield (and frequently is) in iron as well as steel, or steel and iron combined, so that he has to go to the Cutlers' Company for registration in Class 5 so far as his steel goods are concerned, or his steel and iron goods, and he has to come to London for registration so far as the pure iron is concerned, and that produces a state of things which is somewhat anomalous, I think, especially as a difficulty arises, about the fees? He has to pay the fees in stamps on the papers at Sheffield, and then when he comes to London he has of course to present a new application with similar fees. Several practitioners have said they were going to raise a contention on the subject, and to demand that they might be registered for iron and steel on the one set of fees; but no one has done it up to the present time. There is also the

Mr. H. Hughes.

14 May 1887.

question of the other trades which are carried on in Sheffield. There is the electro-plated trade. That is a large trade. We have master cutlers who are electro-platers by virtue of their being makers of knives. For knives, of course, they can obtain registration in Sheffield, but for the other portion of their business, the electro-plate, they have to go to London.

2197. Was not the idea to leave power to register at Sheffield with the Cutlers' Company things that were the special Sheffield cutlery manufacture, because of course there was no power given in other places of manufacture to register locally?—That is true; but then, of course, in no other place was there an existing registry of the antiquity of ours. Our registry had been going on for about 200 years.

2198. You had never registered electro-plate goods?—No. All I say is that the balance of convenience now would, as it seems to me, extend to allowing the registration to be made in Sheffield upon the different trades that are carried on there.

2199. (*Mr. Mundella.*) To embrace all the trades?—Yes. It is not a large question; it would not affect a very great many marks. I think that the Comptroller-General would report that what the Cutlers' Company have done in the way of registration has been properly done; that they have carried out the Act in a reasonable way.

2200. And that you have worked very amicably with the office?—There has always been the most complete harmony between the Comptroller-General and ourselves.

2201. There has been no friction and no conflict whatever?—No; we determined, when we set out to administer the Act, so far as Sheffield was concerned, that there should be nothing of the kind.

2202. (*Chairman.*) What is the next point?—I do not know whether the Committee would like to know the system that is adopted at present as far as fees are concerned? The system in Sheffield is that the fees are taken by stamps in the same way as in London; and the Treasury yearly give back one-half of the fees to the Cutlers' Company. I may say that one-half of the fees does not anything like support the registry as it stands to-day; and the consequence is of course the Cutlers' Company are at some expense and loss in carrying out the provisions of the Act; and if any extension were made, such as I have mentioned, of having a local registry for all the goods that are made in Sheffield, of course that would somewhat cure itself. There would be more fees.

2203. (*Mr. Mundella.*) At present the Cutlers' Company are out of pocket?—No doubt.

2204. The officers of the Cutlers' Company make considerable contributions out of their own purses, is not that so?—That is so.

2205. In order to carry on the work in Sheffield?—That is how it stands. It is out of the purse of the company, of course.

2206. They subscribe so much yearly, do not they?—No; the income of the Cutlers' Company arises from the letting of rooms practically. They have a certain amount of money in stocks, but practically their income comes from letting the building, which is a very fine one.

2207. The Cutlers' Company in Sheffield is not like a London company, it is not in the possession of accumulated wealth, or endowments of any kind?—No.

2208. The mastership for the time being is an office which entails considerable expense?—Very heavy expense. Now you have mentioned that, I might say that for the last two or three years the income of the company has been considerably overspent in the action they have taken with regard to false marking, and marks of origin abroad. They have borne considerable expense.

2209. (*Chairman.*) Did the Cutlers' Company, prior to the passing of this Act, or at any time, register trade marks used on iron that had no relation to cutlery or edged tools?—No.

2210. So that what you are suggesting would be a power in addition to any they possessed before?—Yes. I do not wish to put it as a power which the Cutlers' Company are seeking; but on the ground that the local register has been of the greatest possible convenience to the inhabitants of the district, and I may say that with one voice they would welcome the extension to all the goods made there. It is a disadvantage for a man who is an electro-plater who also makes knives to have to instruct his patent agent to do part of the work of registration in Sheffield and part of the work in London. They would welcome the change, making the registry cover the whole ground.

2211. (*Mr. Mundella.*) They desire that the local registry should cover the local trades?—That is so. I desire expressly not to put it on the point of any selfish interests of the Cutlers' Company, because I think anybody who knows what they have done in the way of taking the lead with regard to marks of origin abroad and false marking within the last three or four years, knows that they are perfectly disinterested in the matter.

2212. I think it is right to say that they spend a great deal of money out of their own purses; they subscribed 300*l.* to send two gentlemen to the Convention at Rome last year?—Yes, and not only so, but they paid the ordinary fee to me for going. It was a very heavy expense, of course, in sending to Rome.

2213. They pay a great deal for legal advice. The fact is, the maintenance of a register in Sheffield is a source of loss instead of income. They do their work admirably. I do not know where the work is done more satisfactorily, or, as I have always heard from Mr. Lack and the Chief Registrar, in such perfect harmony and with so little trouble?—Yes.

2214. (*Mr. Hutton.*) Do the Birmingham manufacturers go to Sheffield for registration?—Only in some few cases where Birmingham merchants have premises in Sheffield. There are a certain number of large Birmingham merchants and Wolverhampton merchants who open establishments in Sheffield for the collection of the different goods that they are buying in the town, and then of course they can apply for marks. The fact of the matter is, they do it because it is their interest to do it, for there seems to be an especial value attached to marks registered with the Cutlers' Company; I do not know why. If you examine the thing carefully there is nothing better in a Sheffield mark than in a mark in the Imperial registry, but there is no doubt it has a sort of extra value in people's eyes. I do not wish to weary the Committee on the subject of the expense the Cutlers' Company have incurred, but only recently, in order to get the whole matter of false marking properly before the Merchandise Committee, they have devoted a considerable amount of money and time to the preparation of the necessary evidence and the sending up of witnesses to give evidence on a matter which practically does not concern them except in a disinterested way, acting on behalf of the trades and acting generally in the interests of the honesty of commerce in the country.

2215. (*Mr. Mundella.*) They are practically acting on behalf of the whole trade of the country?—That is so, practically.

2216. (*Chairman.*) Then you have to call our attention to a point under sub-section 2 of section 81?—Yes; you notice there are mandatory words in the Act: "And "shall also enter in such register in respect of the "same goods all the trade marks which shall have "been assigned by the Cutlers' Company and actually "used before the commencement of this Act, but "which have not been entered in the register esta-"blished under the Trade Marks Registration Act, "1875." The Trade Marks Registration Act of 1875 distinctly saved the rights of the Cutlers' Company and maintained their existing registration. The sub-sections of the Act of 1875 also gave the right to any corporate mark holder, any holder of a Cutlers' Company's mark, to obtain registration in London if he desired, and the two registries were supposed to run together, but it turned out that other words in the

section of the Act of 1875 brought about this result, that when once a mark which was a Cutlers' Company's mark had been registered in London under the Act of 1875, the Comptroller would not allow the Cutlers' Company to deal with it any more. It is, of course, an accidental result of a somewhat hurried series of sub-sections that were put in the Act. It was almost at the last minute that the Cutlers' Company discovered what the Act was, and the clauses were put in in a great hurry, but that was the state of things produced, and therefore, section 81 of the Act of 1883 was put in to meet that difficulty. It directs in sub-section 2 that there shall be entered in the new Sheffield register all the trade marks which had been registered under the Act of 1875 by the holders of them. Those marks all came down on to our register. I think there were 702 of them, and we entered them on our register. Then we have to enter in our register all marks assigned by the Cutlers' Company, and actually used, which have not been registered under the Act of 1875. You will notice that by sub-section 9 it is enacted that at the expiration of five years from the commencement of the Act the Cutlers' Company are to close their existing register of corporate trade marks and the new Sheffield register is to take its place. One great object of this Act was to get rid of the way in which the Cutlers' Company's marks were granted, in the old time, to a man to mark upon his goods, wares, and merchandise, without any reference whatever to class. It was a granting of the mark to the man, not granting it in connexion with any particuiar goods or classes of goods. It was good for all the things which came under the Cutlers' Company's Acts from time to time in existence. We, reading these mandatory words, say that we are obliged to enter in the new Sheffield register all Cutlers' Company's marks which were not registered in 1875. I say obliged, but of course we got this section inserted on purpose to preserve the rights of the holders of these marks. All we ask mark holders is to make application to us, and we say to them you must make application on the ordinary forms; there are no fees to be paid, but you shall make application on the ordinary forms and specify the goods and classes of goods in respect of which you want your marks registered, and acting under the advice of the late Solicitor-General, Sir Horace Davey, who gave his opinion as a law officer of the Crown, we tell the man that he can be registered for all the goods in sub-section 3, if he chooses, only he must specify the goods and classes of goods he requires. Well, now there is nothing in the Act really, as I read it, to uphold that request on the part of the Cutlers' Company. It is a perfectly reasonable request, as your Lordship will see, and is in accordance with modern ideas, but it ought to be, "And "shall enter in such register in respect of the same "goods, upon application being made in the pre-"scribed manner, all the trade marks."

2217. Is there anything to enable you to know what these marks are, without the man applying?—No, my Lord; the marks at present exist in a series of books, and it is impossible to tell in whom the marks are outstanding. We know the marks are there, and of course our local knowledge tells us that a good many of them are being used. I may explain this—the old system of the Cutlers' Company's marks was "one man—one mark," and the consequence was that if a man in the course of his trade bought another man's trade and with it the mark he was using, he did not take a surrender of the mark, and obtain a re-grant, like a copyhold, as is the usual way with the Cutlers' Company—he did not take a surrender because he could not hold the two marks, but sometimes they took re-grants to nominees, sometimes they simply did not take a surrender at all, but went on using the mark, leaving it standing on the Cutlers' Company's books in another name, the name of the original grantee, so that it is difficult for us to say which of these marks are living, and which are practically defunct. What we want is, and we do not want it by way of putting any disability on the applicant, but we want him to say what goods and classes of goods he wishes to be registered in respect of, and to put him on the new Sheffield register in the proper way.

2218. The result of his not applying and not being put on would be that in 1888 his mark would be deemed to have been abandoned?—Yes. You will see that the Cutlers' Company, for two reasons, cannot take the position of saying, Well, if you will not apply in the way we want we will not put you on. First and foremost they might be wrong and get into trouble about private rights, because the man under the mandatory words in this Act is entitled to have his mark put on; and secondly, they would decline to take a position which would appear to bring them into hostility with the Sheffield trades, of which really they are the champions.

2219. Are there many people who own these marks who have not come in and had them registered?—There are a good many outstanding yet. It is only in one or two cases that any objection has been made. There is one gentleman in Sheffield, who is the chairman of a large manufacturing company, who is also a solicitor with a keen eye for a point of law, and he has raised it. Of course, if he raises it successfully, and talks about it, I dare say a good many other people will do so; but many have come in and complied with our request.

2220. (*Mr. Hutton.*) Does not sub-section 10 provide for them: "A person may (notwithstanding "anything in this Act relating to the Cutlers' Com-"pany), be registered in the Sheffield register as "proprietors of two or more trade marks"?—That was put in to cure the difficulty which existed before the passing of this Act that the Cutlers' Company's mark could only be held "one mark—one man." I do not know that those words were particularly necessary really, because if the new register was to be on the same lines as the London register, of course one man could be registered for any number of marks. But the old Company's practice was what was passing in our minds when we asked for that sub-section. I do not know whether there is going to be any alteration in the Act or any amending Act as the result of the deliberations of this Committee. If there is it is a point which might well be dealt with.

2221. (*Chairman.*) You suggest that it should be provided that this should be done on application?—In the prescribed manner.

2222. So that if he does not apply it is his own fault, and the mark will be abandoned?—Upon him should rest the responsibility. I may point out that if nothing of the kind is done, and if there are any marks outstanding in respect of which application is not made, not from any reason as to opposing our desires, but simply from holders not taking the trouble to put them on, I am afraid the result will be that we shall have to put them on as best we can, everything that we have in our books, which would be most objectionable. It would probably fill the register with a lot of defunct marks.

2223. I believe you have something to say with reference to sub-section 6?—That sub-section provides that: "Upon the registration of a trade mark in the "Sheffield register, the Cutlers' Company shall give "notice thereof to the Comptroller," and then come the words, "who shall thereupon enter the mark in the Register of Trade Marks." I believe the practice is that, as regards Sheffield marks, there are practically two registers of them, which seems somewhat useless.

2224. If trade marks are being registered from other places in the same class of goods, is it not essential that there must be some central office which knows what has been registered, so as to determine whether a new applicant is applying for something already registered or not?—Undoubtedly that is so, but, as I take it, that could be done in the same way that we do it. We have to see that we do not grant anything which is granted in London, and we have

Mr. H. Hughes.

14 May 1887.

copies of the marks sent us. Having copies of the marks, that is all we require. I am drawing a distinction between a search index and going through the whole process of registration in London. I do not press it; it is not a matter which concerns the Cutlers' Company, but it seems somewhat unnecessary.

2225. I suppose they would have to keep in the same register, in order of date, the marks in these particular classes, whether registered in Sheffield or elsewhere. It is one register, although in the case of Sheffield you take the marks there?—I do not know that the point is of any great importance, but the registration upon the Sheffield register, I take it, is *the* registration. Of course, if it is said that a complete second registration in London is necessary for the purposes of the office in London, well and good, but it is the entry on the Sheffield register which affords protection to the individual.

2226. Then you have something to say with regard to sub-section 7?—Sub-section 7 applies the provisions of the Act and rules to the case of the Sheffield register. This is only a small point, and I will not take up your time more than two minutes with it. It is only a question of certificate. At the present time, if a man who is registered upon the Sheffield register brings an action in connexion with his trade mark, he has to apply to the Comptroller-General for a certificate for use in court. There should be a certificate from the Cutlers' Company. The Cutlers' Company, by what they have done in the past, and the long time they have kept a register, are perfectly well known in foreign countries, and, without any enactment, apparently, a custom has grown up that the certificates under the hand of the Master Cutler, and the seal of the company, are accepted both in foreign courts of law and in foreign registrations without any demur. If we are going to make a registration in a foreign country, for instance, in Germany, we never think of asking the Comptroller for a certificate—we send our own. I only suggest that if any alteration were being made that might be provided for. It seems an anomalous position that the Comptroller-General in London should be certifying that a mark is registered on the new Sheffield register.

2227. Then I think you wish to direct our attention to the question of appeals under the Act of 1883?—I do not know how far I ought to take up the time of the Committee with a suggestion on this subject. I am not speaking now on behalf of the Cutlers' Company, but as a practitioner. It strikes me that if there could be some cheap and ready means of settling the questions which arise with reference to trade marks, and patents too, in the earlier stages, and if hearings could be held by an official independent of the Comptroller, on affidavit or declarations, as the case might be, it would be an excellent thing. At the present time, if I apply for a trade mark, and if the Comptroller says that it is too near another mark on the register and I cannot have it, I have to appeal to him, as a matter of fact first. I have to attend a hearing, or I have to go to the Board of Trade; and if I go to the court eventually I am in this position: I may prove myself right, I may prove that the Comptroller's objection was not a valid one, but I have to pay heavy costs in practically what amounts to a non-witness action, with the certainty of paying the Comptroller's costs in any event. I have no objection to that at all, as a principle, but if there were a ready and economical means of appeal to some hearing officer who would be independent of the Comptroller, and decide between the Comptroller and the applicant, it would be a very good thing, especially in the case of trade marks, where the value involved, when the mark is new and has not been used, is so small. The only people who appeal to the court to ask for the grant of a new mark when the Comptroller objects are people who have got plenty of money and a certain amount of determination to carry their end.

2228. I gather you do not think that the appeal should be to the law officer. That has been suggested to us?—I think the objection to the appeal to the law officer of the Crown is this. Of course when the law officer of the Crown hears the case, I need hardly say that my opinion and that of every one else in the profession would be, that it would be an admirable tribunal; but the difficulty is to get him. I had a case the other day, where I was applying, under the 26th section of the Patent Act for leave to present a petition for the revocation of a patent, and we had a hearing before the Attorney-General. Sir Charles Russell was then the Attorney-General. Of course, with his immense private work, and with the many other calls upon him, it was a most difficult thing to get an appointment at all; it was put off again and again. Then it entailed this, each side felt that when they went before the Attorney-General for a point of great importance they must if possible go with an ex-attorney-general because it was a difficult and important point, a big patent, and an immense amount of money and time was thrown away. If there was an official commissioner, or whatever he might be termed, who could hear all these things, having jurisdiction as to patents, designs, and trade marks as a whole, and if he were to hear any question as to similarity or novelty, and so forth, it would be, I cannot help thinking, an excellent thing. There is too much expense entailed under the present condition of things. There is nothing you can do but go to the court from the Comptroller; and the Comptroller is practically deciding upon a matter which involves the work of his own department.

2229. (*Lord Macnaghten.*) What independent tribunal would you suggest?—Where the Comptroller is of opinion that a man is applying for a trade mark, and it is considered to be too near or that it is an improper trade mark to be registered, I would suggest that there should be a hearing officer of some description, to whom the whole matter could be referred, and from whom a decision could be speedily obtained; who should devote his whole time to matters connected with patents, designs, and trade marks. Whether there is enough work under the three to take up the time of an officer is a matter with which, of course, I am not conversant.

2230. (*Chairman.*) I think you want to call our attention to the definition of trade marks?—The first point is a point which strikes the Cutlers' Company as of great importance. Of course, they may have an exaggerated notion of the rights of communities to the good name which they have made for themselves, but it has been their view throughout that there is such a right. We find that the state of things which exists at the present time is this, that, under the 64th section of the Act, if a man has a device or any essential particular, he can add any letters, words, or figures, or combinations of letters, words, or figures, or any of them. That means this, that if he chooses he can register a dog *plus* the word "Sheffield," and then he can sell his dog and the word "Sheffield" as a whole to a man who lives in Birmingham, whereupon, under the Trade Marks Act, and under the working of that Act, the man in Birmingham would be entitled to mark the dog and "Sheffield" upon goods which never had seen Sheffield. The case is not an imaginary one. There was a mark came under the new Sheffield register the other day purchased by a firm carrying on business within the jurisdiction of the Cutlers' Company with the word "Middlesborough" in it; and it has come upon our register with the word "Middlesborough" in it. It seems to me, having regard to what was agreed upon at the Convention in Rome, and the growing opinion that the rights of communities to their own good name should be protected, that that is somewhat anomalous. In one of the recent journals I noticed a case which has also come under my notice in my practice, and in which I have to oppose the application where a man who is carrying on business in London is applying for the figure of a pig and the initials of his firm and the word "Birmingham." Well, now, that is a case where, if the man gets it, he, of course, gets the pig and the word "Birmingham."

It happens in that case that the indication of origin is of very great consequence, because we know perfectly well what the man wants. He wants to get the mark of a Birmingham manufacturer who carries on business there, and whose repute is known in connexion with Birmingham. I do not know whether it is too general a point for this Committee to consider. There are two ways of looking at it. You might say that a man shall only register the name of a place for as long a period as he carries on business there, and that the registration shall be at an end as regards the name of the place the moment he does not carry on business there. Of course the Cutlers' Company, with the strong views they hold on the matter, would like to go further and say that the registration of the name of a town shall only be valid so far as relates to goods made in that place.

2231. (*Mr. Hutton.*) That, I suppose, does not give him the exclusive right of using the word "Sheffield"?—No, it does not. Let me put it a little more strongly; let me take a firm that is entirely beyond reproach, and therefore whose name it does not matter about using, Joseph Rodgers and Sons, Sheffield. Rodgers and Sons register their names and "Sheffield" together, and their corporate mark, the Maltese cross and stars, the whole being registered as one mark. What is to prevent their selling their goodwill to a German, we will say, and then letting the German mark Joseph Rodgers and Sons, Sheffield? I must confess I see nothing to prevent it.

2232. (*Chairman.*) Would not that be prevented, under the Merchandise Marks Act, as being a falsification of the place of origin?—The existing law is entirely defective, as I have told the Merchandise Marks Bill Committee yesterday. The Act of 1862 makes it a condition precedent to every prosecution that the person shall have done the act charged against him with intent to defraud or to enable another to defraud. The proof of an intent to defraud is manifestly a most difficult thing. It would be a very strained application, I think, of such deliberate words as those to say a man, who in the ordinary course purchased a business coupled with a trade mark, if he afterwards used that trade mark, was doing it with intent to defraud or to enable another to defraud. If the suggestions which have been made before the Merchandise Marks Committee are carried into law, then I think the matter would be cured, because the Cutlers' Company have submitted a clause dealing with the opposition of false marks of origin which contains the words: "Notwithstanding any rights which he may "have acquired under any Acts for the registration of "trade marks." Whether or not that will find favour with the Committee is another matter. If it does not the point still remains. I may say again that the Cutlers' Company, with the keen desire that they have to lead the van in this matter, refused Messrs. Rodgers and Sons' application until they struck out the word "Sheffield," and the Searchers of the Cutlers' Company who conduct the registration have passed a standing order that they will not allow any mark to come on their register—of course unless compelled by superior power—if the word "Sheffield" forms part of it. Messrs. Rodgers and Sons at the present time have selected a case on which to appeal to the Comptroller. Working as we do on such perfectly friendly terms with the Comptroller, I practically know what the result of the application before him will be. Of course he does not see the thing from our point of view, not having done what we have done in connexion with these marks of origin, and he will no doubt hold, and as I have advised the Cutlers' Company, will probably rightly hold, that under sub-section 2 of section 64, the word "Sheffield" can be added to a device or to an essential particular.

2233. (*Mr. Mundella.*) Am I right in the impression I have that firms from Birmingham and other manufacturing towns have established agencies in Sheffield, and thereupon claim the right to put their own name and "Sheffield" upon the article they manufacture?—Undoubtedly.

2234. (*Mr. Hutton.*) A firm in Germany could do the same thing?—Yes. Of course the Cutlers' Company desire that any prohibition may extend to goods of false indications of origin manufactured in the town. The doctrine is practically new to a great many people. It has occupied the attention of the Cutlers' Company for the last three years, and the Company have made up their minds that in the true interests of honesty and commerce there must be something a great deal more stringent than there is at present in connexion with the use of the names of communities. Having raised this point the Cutlers' Company are determined, if necessary, to take the opinion of the court upon it, hoping to find some amount of support from the decision in Van Duzer's case and Leaf's case, where the judges refused the word "Melrose" as a mark upon a hair restorer, on the ground that you must take the primary significance of the word; and as there possibly might be an industry in connexion with that place they decided that it must not be registered.

2235. (*Lord Macnaghten.*) That is under quite a separate clause?—I am aware of that; but you understand the Cutlers' Company enter into their contention with their eyes open to the fact that in all probability they are wrong, but they will do it with a view to bring public attention to the doctrine they hold, that it is an unfair thing.

2236. At present, and so long as Messrs. Rodgers are trading and manufacturing in Sheffield, the use of the word "Sheffield" cannot lead to any deception. It is only in the case you suggested, that a person having acquired such a name might transfer it to somebody else not carrying on business there?—The Cutlers' Company go beyond the position taken by your Lordship. They say this: that if Joseph Rodgers and Sons, with the word "Sheffield" registered, bring over from Germany goods of the same nature as those they make, it is a manifest injustice, if not a fraud upon, at all events, the artizan population of Sheffield, that German goods should be sent out under the name of "Joseph Rodgers and Sons, Sheffield."

2237. (*Chairman.*) Would it not be better dealt with by a stringent provision in the Merchandise Marks Bill?—Undoubtedly. I have been, perhaps, led into discussing the question, being one in which I take the deepest possible interest, unnecessarily, and I apologise for so doing. Of course the whole of this question is raised before the other Committee. With regard to another point as to registration, viz., monograms, I applied the other day for the registration of a monogram, consisting of the letters M. K., as a mark upon steel. Of course it was refused unless accompanied by one of the essential particulars, which I complied with by putting the written signature of the firm underneath. I do not know why a monogram, which is distinctive, and unlike any other mark upon the register, and which, in fact, passes through the same test as any other device, should not be a perfectly good trade mark. In the case that I had, the "M. K. was an excellent trade mark, and very much like the old iron marks which one is constantly seeing; "B. K.," and so forth.

2238. (*Mr. Mundella.*) Surely your contention would be that you should keep as far away from anything that is common and ordinary as possible?—Undoubtedly.

2239. That it should be as distinctive as possible?—Undoubtedly. All I suggest is that it should have the same tests applied to it as any other mark—that it must not be like anything which exists.

2240. (*Chairman.*) Would not it be rather dangerous to allow letters merely because you put them in a particular form? People would remember the letters and not remember the form in which they were put. If you had two people with the same monogram and the same letters it would be rather dangerous?—Undoubtedly that involves the whole point—is it distinctive; does it practically amount to a device? I will not press the point. I merely raised it as being one worth consideration. There is one

Mr. H. Hughes.
14 May 1887.

thing which certainly does seem to me to want simplifying in connexion with trade marks, and that is oppositions. At the present time a mark appears in the Trade Marks Journal; a client instructs me to oppose it; I put in a notice of opposition; under the present system the applicant then has to make a counter statement; and then after the counter statement has been made my client has to enter into a bond. These proceedings may, under the 69th section of the Act of 1883, involve a waste of nearly three months. It does seem to me that the counter statement and the bond are unnecessary. Why should not the mark, the moment a notice of opposition is given to it, stand for the decision of such a tribunal as it may naturally come before? The only thing that I can imagine is that there is some idea that the bond renders payable costs which might not otherwise be payable, because incurred before the taking out of the summons which brings the matter before the court. Of course it is not a great matter. It does not take very much time or trouble to fill up the counter statement, or to enter into the bond; but the time wasted is very important, and I should suggest to your Lordship that if it could be altered so that a simple notice of opposition should make the matter ripe for decision by the tribunal, it would be an excellent thing. As regards the utility of the bond, of course your Lordship will see that it is useless to enter into a bond to pay the costs, you incur no greater obligation than you would if you did not enter into a bond to pay them.

2241. (*Lord Macnaghten.*) Is that under the rules?—No, my Lord, under the 69th section of the Act, 1883. I may point out in connexion with the counter statement and the bond that there is one thing which it does occupy a good deal, and that is time. There is a certain time given for each process. It takes up considerable time.

2242. What time elapses in the case of registration at Sheffield?—We follow the same rules as in London, except that the Comptroller has one month within which to signify his objections to the Cutlers' Company. We send him the day after the application comes, a duplicate of it, which is provided by the Act. We desire to get rid of the necessity of sending duplicates of the whole of the proceedings. At present every application made to the Cutlers' Company for registration must be in duplicate in everything except the stamp. It seems to me that if one application is made to the Cutlers' Company and two or three essentials that are required, that is to say, the mark and the name of the applicant, were sent up, it would be sufficient.

2243. (*Chairman.*) You mean you might send up a form of certificate: "That we have received an application for," and just the essential particulars?—Precisely. The month which elapses for the Comptroller to give his decision we never find, as a matter of practice, too long; it often is only a fortnight, and sometimes, before we are ready to proceed with the mark, the month is nearly expiring.

The witness withdrew.

Adjourned to Wednesday next at 11 o'clock.

Committee Room No. 17, House of Commons.

Wednesday, May 18th, 1887.

PRESENT:

LORD HERSCHELL.	BARON HENRY DE WORMS.
The EARL OF CRAWFORD.	JAMES F. HUTTON, ESQ.
LORD MACNAGHTEN.	

LORD HERSCHELL IN THE CHAIR.

Mr. J. LOWRY WHITTLE recalled, further examined.

Mr. J. L. Whittle.
18 May 1887.

(*The Witness*) Perhaps instead of going paragraph by paragraph through Mr. Bailey's evidence you might like me to recur to those cases of Hughes which I mentioned as governing the action of the office as regards many of those points taken by Mr. Bailey. The first was an appeal to the Board of Trade in the early part of 1885, which raised a question somewhat similar to one dealt with by the courts in the case of the Krishna mark, which I submitted to your Lordships. That was an application for a mark which the Comptroller could not identify as specially distinctive, but which the Court ordered to be registered. The Registrar objected to it as being similar to the B. list marks. The mystic significance of the hand was not referred to in the argument or the judgment. The number of the mark is 31,832. It was early in 1883 that that was passed.

2244. (*Chairman.*) By the Comptroller?—By the court. It was registered by an order of the court as sufficiently distinguishable.

2245. What court was that?—I think it was Vice-Chancellor Bacon's.

2246. You are calling attention to that decision of the court as guiding subsequent decisions which have been impeached by Mr. Bailey?—As guiding the general policy of the Comptroller in trying to deal with the B list up to a certain point. I mention it as being somewhat similar to this question, which arose in 1885 when an application came from the same firm for a nondescript oriental figure. It was sent in in simple black and white at first. It was compared with these B. list marks which you have already seen and with that mark of Messrs. Ralli. It was presenting in black and white simply an eastern figure that might be anything. The Comptroller could not identify it. The word "banker" was under it, but the

Mr. J. L. Whittle.

18 May 1887

Comptroller avoids making that decisive of his views on the matter. The box was only an outline at that time. He consulted Messrs. Ralli. They objected to it not simply on the ground of its being like other oriental figures, and possibly being confounded with them, but also on the ground that this box appeared which was one of their registered marks. On the whole the Comptroller thought even in view of that previous decision of the court he ought to refuse it. Then there was an appeal to the Board of Trade, and this is the note to the Board of Trade :—"The subject "of this appeal is one of a numerous class of "cotton marks in which a native Indian might "see special characteristics distinguishing this "mark from those previously registered; but "these distinguishing signs would not attract "attention in other markets, even if the Patent "Office had the means of identifying them. This "mark is practically a native Indian, partially "dressed, with his hand leaning on the lid of a box "In dealing with marks avowedly intended for foreign "markets the Comptroller does not regard the ad-"dition of names in Roman characters as giving "distinctiveness. On examination, other marks "representing natives partially clad which could be "identified with particular classes of natives, as "dervishes, coolies, and so forth, were disregarded." All those were quoted by Mr. Fry against the mark. "But the Comptroller felt some difficulty about the "mark 18,037, belonging to Messrs. Ralli Brothers, "and declined to proceed without their consent. This "consent Messrs. Ralli Brothers ultimately refused "on the ground that Messrs. Framjee, Sands, and Co's. "mark might be confused not only with the mark "already referred to, but also with the box mark No. "18,139."

2247. What was the decision of the Board of Trade?—They decided that if the applicants put it in colour it could be passed, and on bringing it out in colour it was passed.

2248. Why? The colour was no part of it, and the parties were not bound to print it in colour, were they?—That struck me as the difficulty about it. It was presented in colour.

2249. (*Mr. Hutton.*) That case has not been before us before?—No; I refer to that as one of the series of cases that obliged the Comptroller to effect that change in his procedure which has been one of the subjects referred to by Mr. Bailey.

2250. (*Lord Macnaghten.*) What was done with that mark?—It was registered.

2251. Was there any undertaking to use it with a certain colour?—It was deposited in colour.

2252. Was there any undertaking?—No.

2253. (*Earl of Crawford.*) Do you happen to know if it is used in colour?—No.

2254. (*Mr. Hutton.*) It was not opposed by Messrs. Ralli?—No.

2255. (*Lord Macnaghten.*) Was that condition of registration suggested by Messrs. Ralli?—No, it was suggested in argument before the Board of Trade. The applicants said they used it in colour, and it was very different in colour. The hearing, as I recollect, was adjourned for them to produce copies in colour. Then the question of combinations was gone into fully in the "Normal" case. I do not know whether your Lordship would like me to recur to the decision upon that. It was the case of the buffalo and the fish. That was held over in connexion with a series of others. It was an application in a number of classes. In some classes consents were obtained, and in some the goods were excluded, but those two classes remained. A fish was found registered for one set of goods which the applicant claimed, and a buffalo's head for another.

2256. (*Chairman.*) That was refused?—Refused by the Comptroller. Then Mr. Murton noted on my minute, "Will Mr. Whittle kindly state whether his "view is that the whole of the parts of a mark must "necessarily be so combined as to present a single idea "to the mind capable of description in a single word, "and, if so, will he explain and support his view "somewhat more fully. The prominent features of "the marks are a bull's head and a fish. Assuming, "as appears to be the case, that the bull's head and "the fish have been separately registered, is this a "fatal objection to a mark combining the two in a mode "which renders it strikingly dissimilar to the sepa-"rate marks respectively?" To that the Comptroller sent this reply: It would be going too far to require "that the impression given by a combination should "be capable of description in a single word. For in-"stance, in one class an alligator is a registered mark "for one owner and a monkey for another; and for a "third application the monkey riding an alligator has "been accepted as a true and distinct combination. "Again, in the cotton class a coolie is a common "mark, and the alligator is a common mark; an alli-"gator with a coolie in its jaws is a true combination "and has now been accepted as a private mark. The "principle which should guide in the selection of a "new mark is laid down by Sir George Jessel in "Jelley, Son, and Jones (41 L. T. New Series, p. 332) "'If a man wants a new mark for his own goods he "'must invent something for himself.' Again, he "says, in *re* Worthington (L. R. 34, Ch. Div., p. 10), "'When a man comes for a new mark and is told that "'his mark bears even the slightest resemblance to "'that of anybody else if he is sincerely wishful of "'obtaining a distinctive device he will of course, "'adopt something else.' This principle was adopted "by Lord Justice James and Lord Esher, and was "followed by Mr. Justice Pearson in July last, in "the case of Tellefsen's trade mark. In the case now "before the Board of Trade there is, it is submitted, "no combination; there is only a collocation of the "bull's head and the fish. The purchaser wish-"ful to recollect this mark would have to count up its "parts, and in the case of representations of natural "objects, such as a bull's head and a fish, the danger "of his recollecting the one part only and forgetting "to add the other is greatly increased. Worthing-"ton's case carries the principle of resemblance of parts "very far, for a conspicuous feature of Worthing-"ton's mark was a distinct device of a church appear-"ing in the centre of a label, but the court rejected "their mark because there was also the outline of a "triangle, and Messrs. Bass had registered a solid "triangle for the same goods. The general principle "that resemblance of parts of trade marks may be "taken into account is recognised in earlier cases by "Lord Chelmsford, for instance, in Weatherspoon *v.* "Currie (L. R. 5, Ho. Lord., p. 519), and also in the "later case of Orr, Ewing *v.* Johnston (L. R. 7, "App. Cases). There are two well known marks for "fermented liquors, the solid triangle of Messrs. Bass "and the open hand placed vertically of Messrs. "Allsopp, both registered for fermented liquors; it "is submitted that the Comptroller would not be "justified in accepting from another owner, to be "used on the same goods, the collocation of these "two marks within a ring or an ordinary engraver's "border or a chain." After a conference on that Minute at the Board of Trade, Mr. Calcraft wished for further discussion of it, and I sent him this minute, from which I will read extracts. "Besides "the actual state of the law, as illustrated in a series "of decisions from Orr, Ewing, *v.* Johnston to Telle-"fer's case in July last, referred to in a Minute of "31st October, there are considerations of general "policy which appear to strengthen the principle run-"ning through these cases. The tendency of new "traders commencing business to get near the marks "of other firms well known in the trade has been "noticed by the courts on several occasions, and the "very existence of the Trade Marks Registry Office "gives special opportunities of indulging this practice, "All the well known marks in a trade are collected "together and can be examined, so that the tempta-"tion to illusory combination in the case of new "marks is seriously increased. This practice, too "is facilitated by section 67 of the Patents Act,

Mr. J. L. Whittle.

8 May 1887.

" 1883, which enables the owner of a registered mark " to use it in any colour so that the outlines of a " mark well known to the public in connexion with a " particular colour might be appropriated by a shifty " competitor in some form or combination of black " and white and his scheme might be developed " subsequently to registration by filling in the " particular outline in the special colour of his " rival. It may be said that a man's mark is his par- " ticular mark and nothing else, as the triangle of " Messrs. Bass or the open hand of Messrs. Allsopp, but " an examination of marks belonging to large firms " will show that the particular mark with which their " commerce is associated becomes known to the " public in a large variety of forms. The triangle of " Messrs. Bass appears in a great number of colours ; " it is sometimes shown alone, sometimes with a con- " ventional oval label. In other cases the mark would " appear in every variety of engraver's conventional " shapes, oblong lables, square lables, and ordinary " woodcut borders. Sometimes these modifications " represent different qualities, sometimes a different " branch of the business, as the home trade or the " export trade. Thus the public are not trained to " look for a particular mark standing alone, but are " accustomed to see it in various modifications and " still rely on it as indicating the particular maker. " In illustration of this practice I append a collection " of Messrs. Will's marks for tobacco. The 'essential " 'particular' in the whole series, it will be observed, " is the eight pointed star. The new competitor, " who is able to appropriate a distinct characteristic " of a mark belonging to a well known trader by " adding on other characteristics which yet do not " merge the distinctiveness of the original owner's " mark, would enable the retailer to pass off his goods " to the general public as the goods connected with " the business of the more celebrated manufacturer." Then I quote Lord Langdale's observations in Croft *v.* Day, which will be familiar to your Lordship, and I proceed : " It has been pointed out that the practice " in cases of injunction is not the same as in questions " of accepting registration of a trade mark. The " early cases, such as Seixo *v.* Provezende and others " down to Orr Ewing *v.* Johnston, were cases of in- " junction, but the other cases referred to in the note " on the appeal, such as Worthington's and Tellefson's " were cases on the question of granting or refusing " to grant a trade mark ; and in this latter class of " cases Sir George Jessel pointed out in Reid *v.* " Richardson that the law was stricter than in the " case of injunctions. (In Reid *v.* Richardson the " court was asked to grant an injunction against the " use of the representation of a terrier's head upon beer " bottles, the plaintiff's beer being sold with a label " showing a bulldog's head. During the argument Sir " George Jessel was pressed with his own decision in *re* " Worthington and other cases, and he replied: 'The " ' discretion of the court in questions of registrations " ' is larger than in questions of injunction,' meaning, " it is submitted, that in cases of injunction the court " is tied down to the actual facts of the case as shown " by the history of the business and the acts of the " respective parties, and is less at liberty to consider " general principles than in the case of applications " for a new mark where the applicant is warned in " the first instance that his mark may be confounded " with the mark of another owner. The powers of " the court, too, as regards damages and account are " much more extensive in the case of an injunc- " tion, and would necessarily be used with much " greater caution. As regards the particular case " cited, I would mention briefly the facts in Edelsten " *v.* Edelsten." I need not trouble your Lordship with that with which you are familiar. It is a case of Lord Westbury's. We then go on to the case of Orr Ewing *v.* Johnston. This was a label re- strained by injunction (*producing same*). This was the original label (*producing same*). That was restrained because of the two elephants.

2257. (*Lord Macnaghten*). There was palpable fraud there ?—No doubt. Then the result of that dis- cussion was a minute in these terms : " The question " which really arises in this case is, whether in " considering if a proposed trade mark be an infringe- " ment of one already registered by reason of its " alleged similarity the design is to be considered as " a whole, or whether it is to be dissected, and if " portions be similar to portions in a registered trade " mark, such portions are to be eliminated, or the " entire design refused as a colourable imitation of one " already registered." The Board of Trade write " they are decidedly of opinion that the decision " must be based on the design as a *whole*, for so " alone could the public or purchaser be deceived, " and this was contemplated in section 72, sub-section " (2) of the Act, but this would not apply to a " motto or word, as either one of these would con- " constitute a trade mark in entirety, and the Comp- " troller would therefore be quite justified in refusing " to register a distinctive word or motto forming part " of a registered trade mark in the same class as " that for which the new application was made."

2258. (*Chairman.*) What was the date of that ?—That is a minute dated 26th December 1885. In reference to that case it is added on the New Civil Service Trade Mark case which was taken together with the Normal case : " The view I have expressed " in the minute on the case of the 'New Civil Service " Trade Mark' is applicable to this case. The mark " must be considered in its entirety. The fact of a " bull's head and a fish having been separately regis- " tered should not prevent a combination of the two " from being registered as a new trade mark."

2259. Was the mark allowed then ?—It was. I may mention to your Lordship in that connexion some cases on which in previous discussions with the Board of Trade I had shown them what I thought illustrated true combinations within those decisions. This is 35,838, a monkey and a mermaid. A monkey in a canoe is another mark, and a mermaid belongs to someone else. It seems to me a true and original combination. This, on the other hand, I submit is not a true combination. Those cross triangles are common, and the fish is common. This is another of the same kind. The fish is common, and the key is common, and the ring belongs to another owner.

2260. (*Mr. Hutton.*) The combination has passed ?—That fish, key, and ring I think has not been applied for, but in view of the recent directions the Comp- troller could hardly refuse it.

2261–361. No. 37,351, the fish and triangle was in use before August 1875 ?—Yes.

2362. Would that be the ground for passing it ?—I forgot that point. I should like to see how that was dealt with. I think it was not registered. I took it to the Board of Trade as an example, not with a view to old marks so much as new marks, and in the earlier stage they agreed with the Comptroller's view that he could not accept that as a true combination. I should like to look that up. It was not a matter in which the Comptroller got any direction from the Board of Trade as between him and the applicant. It was only taken as an illustration.

2363. (*Chairman.*) You took it without reference to it being an old mark, merely as an illustration of the kind of collocation which you thought ought not to be allowed ?—Precisely. The Comptroller feeling that those directions produced somewhat of a revolution in the practice that had been followed under the Com- missioners of Patents, the Board of Trade were good enough to give me a conference about a few marks, afterwards, to make sure that we rightly comprehended their views. Amongst others I produce this one, No. 46,641. My note to it is on this effect. " The cock is " common, the elephant is common, should this mark " be accepted as distinctive ?" Direction : " Add the " name of the manufacturer." Another case was this of two lions couchant, No. 49,763. The direction was to propose to accept it on its being surrounded by a garter containing the name of the firm. Neither of those applications have been proceeded with.

2264. (*Mr. Hutton.*) The combination of the two was passed?—Yes.

2265. Without any name at all?—With the name of the firm.

2266. There is no owner of any registered cock or elephant?—Those are both second-class marks.

2267. It was simply on the ground of combination?—Yes. That was applied for in August 1885, but held over. This direction was in February.

2268. Was the two lions passed?—The Patent Office after this direction offered to pass it with a garter round it containing the name of the firm.

2269. Supposing one lion were put on the top of the other, riding on the other?—That would be a combination one would like to see first. We have lions fighting. This particular mark is only an application.

2270. I have myself sent in an elephant and a castle for registration, and that has been refused?—An elephant with an howdah?

2271. No, with a castle?—I know elephants and howdahs are very numerous.

2272. That has been refused, but two elephants were passed. I have a trade mark with two elephants carrying a globe. You would not pass one elephant and you would not pass a globe?—No.

2273. But you pass an elephant carrying a globe?—I think I recollect that case. That was one of the cases which we passed under this later view of the Board of Trade. There is an example of combination (*producing a trade mark*).

2274. (*Earl of Crawford.*) How many of those are common?—The alligator eating a man is a private mark. The stork is common and the butterfly is common.

2275. Therefore you have two common marks and one private mark combined together to make a new one?—Yes. That was refused, I recollect, on the ground that this was a very conspicuous part and belonged to somebody else.

2276. (*Mr. Hutton.*) Would a pelican eating a butterfly be accepted?—I think it might be accepted if it were sufficiently brought out. It was refused on the ground that the most conspicuous part of the mark, the alligator swallowing a coolie, was someone else's property.

2277. Was there any appeal against the refusal?—No.

2278. Do you keep any register of the refused marks?—We keep all the marks that are applied for. Every application that comes in remains under its number.

2279. But not the refused ones?—There is a separate minute of what are refused and what are not. They are all found under one number.

2280. (*Chairman.*) Do you index them together?—No.

2281. (*Mr. Hutton.*) Would not it simplify matters to have an index of refused marks for reference?—They are all found in Manchester together, and wherever we get a reference to a number we can go to the number, so that a separate series is rather undesirable.

2282. (*Chairman.*) Do you mean that they index the refused marks in Manchester?—Yes. The Keeper searches though the refused marks as well as the accepted marks?—As well as I recollect he keeps a separate list. He always notes for us the refused marks, as well as the accepted marks.

2283. Now that Baron de Worms is here we had better go back to the Normal case?—I will first go back to the case of Framjee Sands trade mark 46,919. This I think you understand was part of the controversy between the Patent Office and the Board of Trade's officers. It was started early in 1885 Mr. Calcraft holding that the office was too restrictive and as he put it in most cases it was a toss up between one mark and another. Sir Thomas Farrer it is right to say when I saw him and talked the thing over rather concurred in that view. Then came this question of a mark applied for in black and white originally.

2284. (*Baron Henry De Worms.*) Colour is not registrable under the Trade Marks Act?—That is so.

2285. Your objection to the registration of that mark was that we had no power to say that a mark should be registered because it happened to be printed in colours if it were similar to another mark which was not printed in colours?—The objection was that it was a nondescript sort of mark and he did not see that adding colour made a difference.

2286. Do I take it it would have been refused unless Messrs. Framjee, Sands, & Co. had printed it in colours?—Yes, that is what I understood to be the effect of the hearing at the Board of Trade. You were not present.

2287. By whom was that heard?—I think by Mr. Calcraft and Mr. Murton.

2288. Is it not laid down in the Trade Marks Act that no colour can be registered in a trade mark as a distinctive mark?—Yes.

2289. It is not a distinctive mark?—No.

2290. The colour itself does not constitute any essential part of the trade mark for registration?—That is so.

2291. (*Mr. Hutton.*) Do you not keep the original design which is applied for, the black and white?—I think the black and white designs were sent down to Manchester, and we have not been able to keep any record of them.

2292. (*Baron Henry De Worms.*) Have you any remark to make on the "Normal" case?—That is a case on which I submitted the minute as to distinctiveness which has been gone into. Then I was going on to illustrate the question of taking a mark as a whole, as to which I venture to think Mr. Murton had rather been carried away by a phrase; it was a phrase which was applicable to all trade mark cases, and which was used both against admitting marks and accepting marks, that you must look at it as a mark.

2293. In your opinion would it be right to dissect a mark and to register the individual parts of a dissected mark even if those distinctive parts of an old mark were already registered?—I think one must look at the balance of a mark.

2294. I will take this particular one. You have a buffalo's head and a fish, and that is a registered mark of chemical substances under clause 1 by Nordenfelt. Then you have the distinctive mark of a buffalo, and then again you have another mark of Dr. De Jongh's cod liver oil with only the fish. Do I take it from you that the registration by Nordenfeldt of the buffalo's head and the fish would preclude the use of a distinctive mark separately of the buffalo's head and fish by two distinct applicants?—Yes. If that had been registered first the comptroller under the old practice would refuse the fish and would refuse the buffalo.

2295. Has that been acted upon since this minute?—Yes.

2296. After this minute the buffalo being registered separately and the fish being registered separately the Board of Trade did allow the combination of the buffalo's head and the fish to be registered as an individual mark?—Yes.

2297. Did you concur in that view?—No; I relied upon the minute which I quoted, which I sent to Mr. Calcraft.

2298. Was there an appeal in that case?—It was an appeal to the Board of Trade.

2299. There was an appeal to the Board of Trade?—Yes.

2300. What was the rule laid down after this, that they did register marks which combined the two?—Yes. You were good enough to give me a conference in January for our further guidance, and though in some points you concurred with what I ventured to suggest to you, you still adhered to that principle of combination as regards two marks.

2301. "The mark must be considered in its entirety. "I do not think that the fact of a bull's head and a "fish having been separately registered should prevent "a combination of the two from being registered as

Mr. J. L. Whittle.

18 May 1887.

"a new trade mark." Have they acted upon that since?—Yes.

2302. That has been the guiding rule?—That has been the guiding rule. I think the full extent of that was qualified by some cases as to which you advised the Comptroller or directed him on the 3rd February 1886. You authorised the refusal of several, but those two you still thought the Comptroller ought to accept with the addition of the name. That is the elephant and the cock. Then in July 1886 you allowed me to show you some cotton marks, the mark of two squirrels. This had been accepted by the Comptroller in view of this mark. Seeing the working, as I was able to illustrate the working of this principle, you authorised me to refuse those two squirrels, and I stopped them, though they were under advertisement. I had your authority for it. Those two squirrels were applied for by Orr Ewing in a sylvan scene and with the surroundings, the Comptroller thought he was bound to pass them, and on the further view which you took we were able to stop them. Since then that principle has been qualified a little wherever I could do so.

2303. (*Chairman.*) That is to say you have as far possible not accepted the mere collocation of two existing marks, unless they were so combined as to suggest some new idea other than the mere collocation of the two?—Yes, so far as we could. We thought that direction of Baron de Worms in August was a development of his principle that enabled us to some extent to change the operation of it.

2304. (*Baron Henry De Worms.*) Taking it broadly, the principle which I think we arrived at was this, that when a particular mark was an absolutely distinctive part of an existing trade mark, then there was some doubt as to whether it should be allowed, even in combination, as a new trade mark?—Yes.

2305. Can you call to mind, in the case of cotton goods, the elephant and the cock with the ornamental bar below each. The elephant, of course, is a common mark upon cotton goods?—Yes.

2306. And the cock is also a common and well known mark. I see on this particular label which you gave me I minuted it "Add name of the manufacturer"?—Yes, that request was made to them, and they did not go on with the mark.

2307. Do you remember these two, where the name of the manufacturer was added?—I thought it was adhering to the view taken by the Board of Trade officers as to any danger of confounding the two.

2308. You mean there was some doubt as to the identification, and the adding the name was used as a special means of identification?—Yes.

2309. (*Earl of Crawford.*) Was that contemplated in the Act —It has been recognised by the courts as regards old marks.

2310. You cannot register the name of a manufacturer?—No.

2311. It must be as a signature?—Yes.

2312. (*Baron Henry De Worms.*) Was this a signature or a name?—It was a name.

2313. (*Chairman.*) Was there any consent in that case by the persons with whose mark it would conflict in case the name of the manufacturer was added?—The question of consent would not arise, they were common marks. In neither of these cases did the applicant comply with the request to add the name.

2314. (*Baron Henry De Worms.*) Was any objection taken in the office to the name of the manufacturer being put in a garter round the two lions?—Having gone into the question in the minute of the 5th December I did not press my views further. I do not know whether I attempted to argue it as fully as I might.

2315. If there had been that mark would have been a bad one?—I think so.

2316. I think on this particular occasion there were a large number of trade marks?—Yes, a number which I was afraid to refuse in view of the "Normal" case.

2317. (*Chairman.*) Were these appeals or consultations between you and the Board of Trade?—Consultations, not appeals. I had bombarded the Board of Trade with these minutes of 10 folio pages in the "Normal case," and I did not think it fair to occupy more time.

2318. Surely it is not desirable that there should be consultations with the Board of Trade unless it be to lay down some general rule. The Board of Trade should only be called into operation in case of appeal?—Yes. I think that would be a wise practice to follow, but from the beginning of the Act it was so.

2319. (*Earl of Crawford.*) That makes it still worse, that there should be an appeal to the Board of Trade, because the Board of Trade may have already directed you on consultation to take a particular line; that is objected to, and it is referred back again to the Board of Trade?—Yes. That depends on the reading given to this section as to "direction and superintendence," which is one of the points I venture to submit to the Committee as to whether they should not be interpreted merely seeing that the Comptroller's proceedings were in order, and not capricious. That was the view acted on in 1884 by the Board of Trade and by Mr. Chamberlain, that they were to see that the Comptroller was acting regularly and in order, and that he could give an account of himself.

2320. (*Chairman.*) That would mean general superintendence and direction, not the determination of special cases which come before the Comptroller? I should have thought so; however, the practice arose of taking their advice every now and then about word questions, and it was developed.

2321. With reference to the question that has been raised as to designs, do you think it would be a good thing, as suggested, that everybody should be allowed to register any design they pleased without any inquiry on the part of the office, whether the design is a new one or not?—I think the system adopted by the Board of Trade of having a search and examination is rather popular. We have in many cases saved cost and trouble to people by refusing identical designs, and so far as it has gone I think it is rather liked by the owners of really good designs. The difficulty about designs is that registration is used for advertisement purposes of a rather trivial kind, little differences in cuts of collars and waterproofs, and things of that kind, are applied for as novel designs, and give a great deal of trouble and difficulty; they are a sort of advertisement to a small shopkeeper.

2322. It has been suggested that the register of designs should be open to inspection in the same way as patents are allowed to be inspected; what do you say to that?—That was one of the few subjects on which I found all trade opinion unanimous in the circuit which the Board of Trade directed me to make in 1883. I visited eight chambers of commerce, Kidderminster, Birmingham, Bradford, Stoke, Glasgow, Manchester and others.

2323. You mean unanimous against inspection being allowed?—Against inspection.

2324. Do you think there would be any objection to the Comptroller showing the applicant, or allowing him to see, a particular design or designs which were thought by him to conflict on the ground of the prior registration and on which he refused the application?—No; I think when the man has got so near the design that the Comptroller feels bound to object to it he is safe in illustrating his objection by letting the man see the design.

2325. That would not be subject to the evils which have led manufacturers to object to the inspection of a design for fear that others might get ideas and copy them; because in the case this applicant has got so near somebody else's idea independently?—Yes.

2326. Another suggestion I should like to ask your opinion upon is this. Do you think there would be any objection to the office on payment of a prescribed fee informing a person applying and sending a design whether that design was already registered. I mean

not sending it as an applicant for registration, but sending it for the purpose of obtaining the information?—That is done now I think.

2327. Not exactly?—It is done on a fee.

2328. (*Lord Macnaghten.*) It is only done now when the applicant wishes to register, but the case which Lord Herschell referred to was the case of a person, before he executed an order, wishing to know from the office whether he might do it without infringing any persons property in a design?—That I think is done under rule 35 of the designs rules. We have a large number of searches of that kind, and a large proportion of the salary of Mr. Tomlins is made on that.

2329. (*Earl of Crawford.*) Do you consider that to be a search preparatory to the initiatory proceedings for the purpose of registration?—It is often used in that way.

2330. (*Chairman.*) If a person produced or forwarded a design to you, you would make that search merely for the purpose of ascertaining whether it was a registered design or not?—Yes, under the Act.

2331. (*Lord Macnaghten.*) Supposing an applicant said, I have been asked to produce this design; this design has been sent to me to be affixed to goods; will you tell me whether I may do it without infringing anybody's property?—We cannot tell him exactly, because there might still be some design under the old Act. They are pretty well expired, but there are some.

2332. (*Chairman.*) You only make the search as regards designs under this Act?—Yes; there is a general period of five years for designs of all kinds fixed upon under this Act. It was a frequent subject of complaint on the part of the metal trade that the period is not longer. I should like now to refer to the exact terms of the order in Messrs. Framjee Sands' (32,246) case 46,919, I see Mr. Murton's note to the Board of Trade was, "I am not convinced of the "resemblance between any of these marks, and any "others," and then the order finally made by the Board of Trade was that they were allowed at the hearing to substitute these representations in colour. Then on the adjourned hearing this was the order, "That registration be permitted on the condition "that certain words and characters, including the "name of the applicants' firm be inserted in the "margin of the trade mark."

2333. (*Baron Henry De Worms.*) Has it not been the practice in the Trade Mark Office to put the name round the mark, although that name was not absolutely legally capable of registration?—It is a frequent practice for applicants to put their names.

2334. I think if you tax your memory a little you will remember that that question was raised between us when we had the conference, as to the practice of the Registrar, of putting the name as a distinctive mark although it was not capable of registration. I think you suggested that the practice was not a proper one?—I probably mentioned to you that many old marks and many common marks have been passed with the addition of the names by the courts.

2335. I think you showed me some examples, or told me that there were some?—There are many examples of old marks.

2336. I think there are a good many names?—The addition of the name is an element.

2337. It is not infrequent?—It is constantly relied upon as distinguishing.

2338. Who would have the authority to add the name to the mark. Would it be the Registrar. Would it be done on his authority?—Nothing is altered in the mark except by the applicant; but at a hearing, when an objection was taken, if the applicant proposed to add his name it might be taken as qualifying the resemblance.

2339. Supposing two marks were not absolutely the same, and were capable of registration, but they were to a great extent similar, has it not been the practice of the Registrar to draw a distinction between the two, as in the case of the lion and cock, by adding the name of the manufacturer?—I could not say whether it was the practice.

2340. Has it often happened?—It has sometimes happened that the addition of a name has been regarded as rendering one mark sufficiently distinctive from another.

2341. In the case of No. 46,641, was any objection taken on the part of the Registrar to the minute that I made saying that the name of the manufacturer should be added as a distinctive mark. Is there any record of any such objection?—No.

2342. I take it, if it had not been more or less the practice of the Registrar to add the name as a distinctive mark, it would have been his duty to call my attention to that, would it not?—The conference was rather out of your goodness in helping us to interpret the decision on the previous case.

2343. It would have been the duty of the legal adviser, at all events, to call your attention to it?—I am afraid I did not press on you sufficiently the difficulties of the matter.

2344. (*Mr. Hutton.*) This is the duplicating of common marks?—Yes.

2345. But how would it be in the case of duplicating registered marks?—The Comptroller would object to a duplication as not being distinctive. That was the view entertained by the Commissioners of Patents.

2346. We had the case of a rifle brought before us by Mr. Bailey. His firm had a rifle registered, and an application was made for three rifles. He had to give his consent. Then there was another application made for the registration of three rifles, and that was granted without reference to them?—It was a case with the addition of a common mark, the shield of Lancashire. That was a mark which the Comptroller felt himself bound to pass under this series of cases.

2347. Though a registered mark?—He considered that the series of directions applied.

2348. I think that was the case of No. 16,814 and No. 50,182. They appealed against it?—Yes.

2349. He says: "The applicant of No. 50,182 did "not know that the rifle had been registered, and "then withdrew it"?—Yes.

2350. "Although the Registrar had practically con- "sented to let him have it"?—That was a mark as to which in view of the "Normal" case the Comptroller thought he would not be justified in forcing the parties to appeal to the Board of Trade.

2351. That is really where the Manchester merchants differ from the Board of Trade?—Yes. I proposed showing that a great majority of Mr. Bailey's objections turned upon that.

2352. He brought some cases before us similar to that?—Yes.

2353. In some cases the application had been made?—I find that there were 15 groups referred to by him, and of those about nine I think turned on the results of these decisions at the close of 1885 in the "Normal" case.

2354. I suppose that would really be the reply to a number of those cases of Mr. Bailey?—Ten out of the 15 cases would turn on that. There is a case which I do not think Baron Henry de Worms had anything to do with. The question was discussed fully by Mr. Murton. There was a series of appeals which were held over and which came on shortly after the "Normal" case, and they turned on this question of the resemblance, not merely of combination but of distinctiveness between one mark and another. This was a mark registered by consent, a Japanese figure with a tortoise (*producing same*). Subsequently this was applied for (*producing another trade mark*).

2355. (*Mr. Hutton.*) This one had to get the consent of the previous owner?—Yes; there was not anything like the same similarity with the previous mark that there was between this and that. This is the Comptroller's minute: "In regard to this mark "five registered marks were cited against it by the "searchers at Manchester, and applicants were in- "formed that if they obtained the consent of the "owners of the mark No. 38,358, the application

Mr. J. L. Whittle.

18 May 1887.

" could be proceeded with. The mark of Messrs. " Dewhurst shows a Japanese figure with a tortoise, " and has the words added, 'Japanese fisherman and " 'tortoise.' The mark is one of that large class " of Oriental marks which may have a very distinct " significance in particular markets, but which the " Comptroller is obliged to compare with combinations " of natives and animals, the particular significance " of which is unknown to him. At the hearing " applicants declined to ask for the consent of Messrs. " Dewhurst, and the application was refused."

2356. Did they appeal?—No. 41,878 was finally accepted by the Board of Trade after some conference with Mr. Murton.

2357. Without reference to No. 38,358?—Without enforcing the condition of consent. Then this mark is applied for by the same firm, a Japanese stork with a label in its mouth (*producing same*). We had already registered that mark No. 4,954 (*producing same*). There is also registered No. 8,792, an old mark of two storks. On that point the Comptroller wrote, "48,179 is another Japanese mark showing " the stork well known in connexion with Japanese " symbols with a label in his beak and a globe below. " Two registered marks (Nos. 4,954 and 8,792) were " cited against this application, and two volumes of " the B list, one showing globes and the other showing " storks, as old marks not registered in class 23. " The application was refused in view of the two " registered marks of which representations are " attached, and also of the old mark shown at vol- " ume 3, page 132, of the B list. Although these " marks were discussed at the hearing, by an over- " sight the refusal form did not include a reference " to the B list mark." On those two cases Mr. Murton wrote:—" I see no special reason for referring " these five appeals." There were three other appeals altogether, in one of which the Comptroller's view was confirmed.

2358. (*Chairman.*) Does he mean referring them to the court?—Yes. "I think they may very well be " heard by the Board of Trade. Assuming that there " are no such mysterious affinities, discoverable in " certain markets but not here, as Mr. Whittle ap- " pears to suggest, I cannot help saying that a " comparison of the respective marks really makes it " difficult in many cases to detect points of re- " semblance. If this difficulty be not removed upon " hearing the appeals, I think the Board of Trade " should consider whether they will not admit such " marks to registration; leaving it to any person " 'aggrieved' to apply under section 90, to remove " them from the register. Mr. Whittle remarks that " the Comptroller is obliged to compare Oriental marks " like these with 'combinations of natives and " 'animals the particular significance of which is " unknown to him.' I think that the 'resemblance' " mentioned in section 72 (2) was intended by the " Legislature to be such a similarity as would be " likely to deceive purchasers of the goods; that it " must be outward, and fairly obvious to the eye, and " not a resemblance discerned by a mere mental " process of reasoning from facts known only to " experts. But even if this view be incorrect, is there " no one in England to whom the 'particular sig- " nificance' of these combinations is familiar? It " would be a less evil to obtain external assistance " than to refuse registration to certain marks through " an avowedly imperfect knowledge of the subject." Now I submit that that is overlooking, or at least not taking full account of the principle laid down by Lord Selborne in the Singer *v.* Loog case, that it is for the applicant to inform the office what his mark is, and what his mark means, and to clear up the difficulty. In that case Lord Selborne said, "The imitation of a man's trade mark, in a " manner liable to mislead the unwary, cannot be " justified by showing, either that the device or " inscription upon the imitated trade mark is am- " biguous and capable of being understood by different " persons in different ways, or that a person who " carefully and intelligently examined and studied it " might not be misled." There is one mark referred to by Mr. Bailey of a later date, which I think the Comptroller would, irrespective of the coercive influence which he considers these decisions exercised over him still have to refuse. That is the case of these two Kings of which Mr. Bailey complains, Don Luiz of Portugal, No. 51,500. He refers to the fact that No. 40,541, representing Umberto II., was refused. That was refused because the word "Umberto II." is a common mark in the B. list, and we have also representations of the King of Italy.

2359. (*Earl of Crawford.*) Surely you would not refuse as a mark his portrait with the name on it, because the name is a very common name?—We have both the portrait and the name, but I should think the Comptroller would be bound to refuse such a case as your Lordship puts. It was refused on the ground of being in the B. list. The portrait of Don Pedro, No. 51,179, was refused on similar grounds, when this mark of Don Luiz came in we did not have a portrait which resembled this nor the name. It was accepted.

2360. Do you then go on the question of resemblance of portraits. Suppose there were no name there?—That would depend on how far it was distinctive. There comes in the question how far you are to speculate upon the mark being very badly impressed.

2361. (*Chairman.*) With reference to goods in the cotton classes which would go to India and China, I do not suppose that the Chinese or Indian would recognise the difference between one king and another. The portrait of a king with a crown over his head would convey much the same idea. I do not suppose they would recollect the countenances of the different monarchs?—Well, that is one of the subjects upon which the Comptroller would be very glad to have the guidance of some court, but in view of such a decision as that Krishna mark I am afraid he would run great risk of having a decision against him, if he were to refuse a mark like that.

2362. (*Baron Henry de Worms.*) With reference to these trade marks of the heads of kings; has it been the custom to register the name of the king as well as the portrait?—It has not been the custom to insist on the name of the king being added. It very often would help the Comptroller to identify a particular trade mark.

2363. But as a matter of fact a name has been registered with a portrait?—Yes, it is registered as it is presented, the Comptroller would refuse the words or the portrait to anybody else if he had a mark of that kind.

2364. The name has been considered an integral part of the whole trade mark?—That is a matter for the court.

2365. But by the Registrar?—It would be classified, he would index the name.

2366. He would refer to the particular trade mark, for instance the King of Portugal as the trade mark of the King of Portugal with Don Luiz written on it?—He would have Don Luiz in the index.

2367. Supposing there were no portrait at all, would they have registered the name of Umberto the First?—No.

2368. Only in connexion with the portrait?—It would come in as a question of fancy words. There have been distinguished public characters taken at first without consent. Mr. Gladstone's name, Mr. John Bright's name, Prince Alfred's, and so on were taken as fancy words; then it was found it was better to get consents in certain cases. The registration of words in the cotton classes is suspended altogether.

2369. Do I take it that the names of distinguished persons were taken, and registered as fancy words?—Yes.

2370. The definition of a fancy word being a word that is not found in the dictionary; was it on that principle it was taken?—There is no definition in the Act.

2371. That is the accepted definition, is it not, of a fancy word?—I am sorry to say hundreds have been registered.

2372. (*Mr. Hutton.*) In an English dictionary or a German dictionary?—Yes.

2373. (*Baron Henry de Worms.*) I take it that they register the name of Don Pedro or Don Luiz with the portrait as an integral part of the trade mark?—That particular mark was not registered, but in the list of common marks we find the words Don Pedro, and therefore that is evidence to the Comptroller as far as it goes that he should not give either a portrait of Don Pedro, or the words "Don Pedro" to anybody else.

2374. But there are portraits of kings with their names registered as trade marks?—Yes.

2375. Where the name appears as a part of the trade mark?—Yes, the King of Portugal is, I believe, registered in that form.

2376. (*Earl of Crawford.*) May I carry that point a little further. A portrait of a king is allowed, where is that to be limited. May you without consent take a portrait of Mr. Gladstone and register that as a trade mark. You would be able to go against anybody who sold a portrait of Mr. Gladstone's?—Yes, if employed as a trade mark.

2377. (*Baron Henry de Worms.*) There is a very common trade mark, Garibaldi, Garibaldi shirt or hat?—It is a very common mark in the B list, it is one of the most common. The German Emperor, Bismarck, and Garibaldi are all B list marks.

2378. And they have all been registered?—Certainly, I think all those portraits have been registered in other classes by the Comptroller.

2379. In many cases they have portraits?—Yes.

2380. (*Earl of Crawford.*) Do you register a portrait of Mr. Gladstone?—Yes, and of Lord Beaconsfield and Mr. Parnell. Latterly, when it came to less celebrated people, the Comptroller has always asked for consents, especially with reference to actors and actresses.

2381. (*Baron Henry de Worms.*) Is there a case at present of large match manufacturers their trade mark being men of light and leading, and all the portraits or photographs of leading politicians on the box as trade mark?—Yes, there are several such collections. We have often found that people do not like giving their consents to one person and not to another. There was a good deal of trouble about the Primrose League, everybody applying for the Primrose League. We found people determined not to give consents, so that it is blocked in certain classes.

2382. (*Chairman.*) Does that finish all the illustrations you were intending to give us of the marks?—There are one or two cases of Mr. Bailey's, where the Comptroller could not agree with him. They are not affected by the later practice of the Board. He refers to this case of the dogs. He mentions as an instance of capriciousness that a ring of dogs' heads with a letter in the mouth is accepted, though a dog's head with a letter in its mouth was refused, and that subsequently a circle of watches was refused. The dog is one of the most common marks; there is one case of a dog with a placard in his mouth. He thought it was coming too near common marks to take a single dog's head with a letter in its mouth, but when a circle of these heads like *this* (*producing trade mark*) was sent in, these objects being single and not a reproduction of any mark on the B list, he thought it was sufficiently distinct, but when some firm followed it up with a ring of watches, each watch being a reproduction of single marks in the B. list, he thought he ought not to take that.

2383. The distinction in the case of the dog was that it was a dog with a letter in its mouth?—Yes.

2384. And a circle of dogs with letters in their mouths?—Yes, that was not an actual reproduction of any mark in the B. list.

2385. (*Mr. Hutton.*) Both dogs and watches are considered common marks?—Yes, dogs are common, but not a dog in that particular combination with a letter in its mouth.

2386. Is that a registered mark, a single dog with a letter in its mouth?—No, there is no such mark.

2387. I suppose it is the form in which they are combined in a circle?—Yes.

2388. That is another instance of the duplication or triplication of the same marks?—It is not simply duplication, it is multiplication in that particular form.

2389. (*Baron Henry De Worms.*) A dog itself is a common mark?—Yes.

2390. An ordinary dog would not be capable of registration?—It would not.

2391. (*Chairman.*) A dog carrying an umbrella, I suppose, if not already registered, you would consider a good combination?—It depends on how it is presented. I should think so.

2392. If the prominent idea conveyed was that the dog was carrying an umbrella, and not that it was simply a picture of a dog?—Yes, I should think it would be perfectly safe.

2393. (*Mr. Hutton.*) Mr. Bailey's case was that a circle of watches was refused, but a circle of dogs heads was registered?—Yes.

2394. On what grounds was the one refused, and the other registered?—Because the circle of watches reproduced in greater number, and in that particular arrangement of the circle, the actual objects that appeared in the B. list, whereas the circle of dogs heads did not reproduce any actual object that appeared in the B list. There was no dogs head in the B. list with a letter in its mouth. He also referred to this case of the seven boys; Pleiades in various forms, the that I think, your Lordships have seen depended on the view which was rightly or wrongly taken by the office of the difference between nationalities. *That* was registered, and these were taken afterwards (*producing same*).

2395. (*Baron Henry De Worms.*) One of these was refused?—No, these were accepted. After *this* was accepted by the Comptroller, it was withdrawn on opposition.

2396. (*Earl of Crawford.*) It is in daily use now?—A latter applicant applied for this. Mr. Bailey mentions that not a word was said as to these other people. We wrote to the applicant telling him that a previous applicant had been opposed by the owner so as to warn him, but as the Comptroller's opinion was that still there was a difference between *that* and *that* he went on with it.

2397. (*Mr. Hutton.*) That one was withdrawn, prior to the registration of this one?—Yes.

2398. Mr. Bailey's ground of contention was the variableness of decision, that a few months after the refusal of this to be registered they go and register a similar thing?—It was put in that way. That was his conception of it, but it really was not dependent on the action of the Comptroller. He adhered to the view that there was a distinction, but he could not be confident that opposition would be taken to this as it was in the other case. He warned these applicants that a similar mark had been opposed.

2399. (*Chairman.*) There was no opposition to that mark?—No.

2400. Are those all the cases you wish to bring before us?—I might illustrate the question by reference to a judgment which was delivered the other day. That mark No. 54,557 cross triangles and a stag within it, was registered. A stag is common in the beer trade, and cross triangles are registered for old marks, but Mr. Justice Chitty removed the triangles on the application of Messrs. Younger. This mark of Younger's is registered as an old mark. Then I should like to read Mr. Bailey's views about this question of combinations, as I think it shows the similarity of those views which he adopted and how practical his views are as to the possibility of working them in certain aspects of the Manchester question. This mark was passed early in 1886, (*producing a mark*), the plate belonging to

Mr. J. L. Whittle.

18 May 1887.

one person and the forks to others, Messrs. Ralli's objected, and they sent me a copy of their letter. Galbraiths proposed to go to arbitration, and Ralli's objected. They said: "But by the position given to "your mark by the registrar through his altering his "former practice of requiring the written consent of "older owners *before* they are exhibited to the public, "we are placed at a disadvantage in an arbitration; "and there is besides the difficulty of our not being "the only firm interested in such an arbitration." They mention that the plate belongs to somebody else. They sent me a formal copy of that, and I thanked them for it and pointed out, "that the "action of the Patent Office on which you comment "is more accurately described as that of the Comptroller, he being the official responsible under the "statute subject to directions from the Board of "Trade. That, however is a matter of form merely, "as Mr. Lack and I are agreed as to the obligation "to adopt the recent practice and as to the particular "cases in which it has hitherto been applied. What, "however, I would direct your attention to is that "the change in practice to which you refer is made "under section 82, sub-section (3) of the Patents Act, "1883;" which was the principle impressed by Mr. Courtenay Boyle on the Chamber in their interview with Lord Stanley. They then wrote me a long letter saying: "We take this opportunity of thanking "you for your letter of the 22nd inst., in which you "point out to us that the action of your department "in passing conflicting marks for exhibition to the "public is really that of the Patent Office, through "the Comptroller under section 82, sub-section 3 of "the Patents Act of 1883. We are fully aware of "those facts and the circumstance of the letters being "signed by yourself as registrar caused us to address "you; besides which we would remind you that "when you paid a visit to the Manchester Chamber "of Commerce at the request of the then President "of the Board of Trade, you informed the Chamber "that it was the President's intention to bring the "trade marks administration under his personal "observation, and that he had charged you from "the 1st January 1884 to attend to the whole subject "of trade marks, Mr. Reader Lack, the Comptroller, "being too much engaged with other duties to "personally take up the details of the registration "of trade marks, so that while fully cognisant of "the authority of the Board of Trade in directing "the machinery of registration, it was with no "disrespect to the Comptroller or to the Board of "Trade that we commented upon their action as "being that of the registrar, the registrar being the "official who would naturally place before the Board "of Trade all the details (of the trade marks used "in the cotton districts) which guide the Board in "its directions to the officials who have charge of "the working of the Act. We regret to find that "the Comptroller and the registrar are now agreed "under the Act of 1883 to adopt the recent practice "we complained of, of submitting marks to the "public which conflict with those already registered, "without first requiring that the new applicants "should obtain the consent of the registered owners "before they were passed by the registrar for "registration. As far as came under our observation "during the years 1883, 1884, and 1885, the Comptroller required new applicants for conflicting marks "to arrange with old owners before he sanctioned "their applications, and under this method of "applying the Act we facilitated the registration of "numbers of marks by our neighbours, as it gave "us the opportunity, by friendly discussion of "modifying features of new marks which came too "close to our registered marks, or of coming to a "working arrangement with the applicants as to the "markets for which the conflicting new marks might "be used, and you have acknowledged our readiness "in granting these facilities. In fact we have "granted fully four times as many consents as "refusals. But in the present year 1886 the Board "of Trade is no longer acting on the practice "which prevailed under the same Act during 1883-"1885, or at least is not acting to the same extent, "so far as we can judge and the result is that the "Manchester trade is put to additional inconveniences." He goes on in another part to refer to the equitable proceedings of that time, then he regrets that it has been departed from. I read that as showing that on the whole the working of the Act satisfied the practical demand of the trade as represented by Mr. Bailey at that time. There are certain points in which, as he explained to your Lordship, they demanded more than the Comptroller at any time thought himself justified in giving, but as the business worked in 1884 and 1885 the discontent was very much less. It was rather a matter of principle depending upon that belief in the superior efficiency of the work in Manchester over all other parts of the world, and when they renewed their general claim and criticisms of our work in 1884 and 1885 the criticism was much slighter and very different from the criticism which you have now had before you from Mr. Bailey. A great deal of that criticism, if it had been given in cordial co-operation between the office and the Chamber of Commerce would have helped the Comptroller to adjust his practice in certain details. For instance, I may mention the fact that they were not prepared to give me the benefit of a conference when I went back to Manchester in the winter. That question of the selvedge was a point where the aid of the Manchester trade was most important. The Comptroller felt there would be great difficulty in refusing that mark as claimed without being backed up by the help of the Manchester trade in putting evidence before the Court. They were able to do that, and the Board of Trade succeeded in getting a decision in their favour. That has been, I think, the difficulty which you will trace through the evidence both of Mr. Bailey and Mr. Fry, who, though to some extent representing and in sympathy with the trade, does not agree with Mr. Bailey as to the remedies to be applied. Mr. Bailey thinks that it is easy enough to find new marks. Mr. Fry takes a different view of the facts. He thinks it is only by getting at some sort of combinations, such as have been attempted in cases of this kind, that the wants of the public can be supplied. Mr. Bailey told you frankly that they would rather not have registration of trade marks at all. Mr. Fry, in another part of his evidence, pointed out that the trade complained of having their marks, or, at least, disliked having their marks on exhibition. The advertisément of a trade mark is one of the conditions of its healthy enjoyment in almost every other trade. There is that feeling that in 1876 a certain section of the trade, probably the most influential and important, believed that trade mark registration in any form is rather a nuisance, and would like to get rid of it. There is the local feeling in favour of the Manchester working, and when there are changes and vicissitudes in practice the general public in Manchester rally to their support, and there come these crises. Your lordship asked me on a previous occasion as to the possibility of the Comptroller being guided by the decision of some one in Manchester. I think that fundamental distaste for working the registration system would always make such a system a difficulty. You would always have a tendency to break away from the registration system, and if an officer with these special powers was established, the Comptroller would be compelled to drift along for a time really on his advice until the practice would be upset by the courts, and it would come back to a repetition of something like the confusion of the B. list which existed down to about 1882. In reference to that I may mention that in 1883, when the Act was passing, there was an opportunity for the Trade Mark Committee to have helped in the settlement of this new Act. They formulated their renewed demand to Mr. Chamberlain that trade mark registration, if it were to exist, should be for all textiles in Manchester and nowhere else; but the Trade Committee of the House got very little

information upon the special bearing of the sections upon Manchester work, and it was only by spelling out section 113 after the Act was passed that there was any validity given to the B. list at all. All the special cotton rules disappeared from the Act, and the Manchester trade committee never instructed Mr. Slagg, though he was a member of the committee, to take any action in the matter. It was allowed to drift. When I saw a very able representative of the chamber, Mr. Lord, he said that what they wanted was registration for all textiles, not merely for cotton in Manchester and for designs, but that they would take the increase of Mr. Fry's powers as an instalment. Then again, as I say, they did not help us at the end of 1884, they renewed their demand in 1885. Mr. Chamberlain thought that as Mr. Fry had this technical knowledge it would get over the main difficulty to have him in London. Then in 1885 they asked to have him back, but the terms on which he was to go back, and the nature of his functions have been somewhat misapprehended by Mr. Bailey. I think there is a suggestion in the draft minute of the Board of Trade, that there should be a meeting of the chamber to consider what his function was to be, and an agreement with the Board of Trade as to the terms on which he was to go back. It was represented, however, to the Board of Trade that Mr. Fry's return to his functions there would be very useful in acting as a sort of officious adviser rather than an official adviser to applicants that when a man came with an application he could show him the marks in the way, the marks of people who were likely to oppose, and say: If you want to get your mark rapidly through, facilitate your application by getting these consents. But that was a very different thing from pronouncing officially that the mark could not be accepted without these consents, which he had no power to do. You will see in Messrs. B. Stevenson's letter, quoted by Mr. Fry, that those suggestions of the keeper of the Manchester office as to how they should facilitate their application are treated by the trade as a recognition of Mr. Fry in the position they wished him to hold, as a conclusive authority in these matters, which is not what the Board of Trade proposed to make him at that time.

2401. Complaint was made that the registrar or Comptroller had required an applicant to get the consent of another firm; that the consent of that firm had been refused; and that notwithstanding that the application was allowed?—Yes.

2402. Does the Comptroller require the assent to be got in cases where without the assent he might or would still allow the application to proceed?—The process of consent has grown up practically only where the applicant offers it. It has been pushed perhaps somewhat further in the Manchester cases than it might be. The Comptroller never proposes in the first place. I will not say never, but the practice was not to propose to pass a mark on consent, but to object to a mark on the ground of a registered mark, and then if the applicant before the hearing says: I can send the consent of so and so, or at the hearing says, probably I will get the consent, he has held over the case if the marks were not identical, and if they were identical he has refused.

2403. Would it not be better to limit the suggestion that consent should be obtained to those cases only where, but for the consents, the application would be refused?—That is so, certainly. That is certainly his practice.

2404. We have heard of applications for consent being made and refused, and after all it turns out that the refusal has no effect?—It has only been an accident, if there are such cases. I think the allegation that consents have been asked for and then refused arises from this misconception of Mr. Fry's work. Mr. Fry has suggested that oppositions might be avoided, or that the Comptroller's objection might be avoided by getting consents, and on looking at the marks and at Mr. Fry's reports, especially in view of this recent practice, the Comptroller has been able to pass them without those consents.

2405. (*Mr. Hutton.*) You just now said, I think, that the Manchester merchants would not give any assistance whatever to the Board of Trade?—I would not put it so strongly as that. I say they did not give us all the assistance they might.

2406. You specially mentioned a particular year. I daresay you recollect very well that when the Act of 1883 was passed, the Manchester merchants protested very strongly against the terms of the Act?—Yes.

2407. In fact, I think they refused to withdraw some opposition to the passing of that Act unless some alterations were made in the words. I have not the evidence before me now, but it is Mr. Slagg who was then a member of that committee on the Trade Marks, went to the Board of Trade to induce Mr. Chamberlain to make some alteration in the working of the Act?—I am not aware of that, but I know that they did tell Mr. Chamberlain that the state of things was very unsatisfactory, and he promised to take some steps to remedy it, but what exactly passed I cannot say.

2408. In the letter that has been put in and printed you say that the proposal of the Board of Trade was accepted by the trade on trial for a period of six months?—That is Mr. Chamberlain's proposal to get rid of delay by making new arrangements.

2409. And I suppose to remove the friction which existed?—We hoped that Mr. Fry's presence here, in daily consultation with Mr. Lack and myself, would get over a great many difficulties.

2410. Are you not aware that that was really not accepted; it was not an acceptance on the part of the Board of Trade, but they were obliged to wait and try it; it was not six months but 12 months, or over 12 months?—Yes.

2411. I think you mentioned just now that the Chamber of Commerce of Manchester took no action during the year 1884?—Yes.

2412. They gave no assistance?—Yes.

2413. Was not that in consequence of Mr. Chamberlain's request that they should try how the Act would work for a certain period and then come and make further representations to him?—The six months originally referred to had expired when I wrote to Mr. Browning, the secretary, at Mr. Chamberlain's desire, saying I was coming down to Manchester, and would be happy to receive any advice or counsel they could give me.

2414. Did not they give you any help at all?—The only answer I had from Mr. Browning was that he would lay it before the Chamber. After waiting six weeks I went down, by Mr. Chamberlain's direction, to complete the information as to the state of the office and the printing of papers and the arrangements there. I never heard anything further. I called the last day on a number of gentlemen, and was received very courteously by them.

2415. I see in this letter you also say that the Manchester Chamber of Commerce are not unanimous in presenting this proposal, and that the representations now made come from a committee of the Chamber, and not from a general meeting; I suppose you are aware that all the action of that committee has been endorsed by the whole Chamber at several annual meetings?—I believe so.

2416. Therefore I do not understand why you say they are not unanimous, and that it has not been endorsed by a general meeting?—There were some members of the Chamber who did not take that view, therefore I said they were not unanimous.

2417. Have those members made representations to the Board of Trade?—I think Mr. Hoyle, for one, was a member of the Chamber, and I think Mr. Barclay also.

2418. Mr. Hoyle has asked for a letter of his to be put in evidence in which he endorses the action o the Trade Marks Committee, with the exception of as to these headings. This letter of yours which has

Mr. J. L. Whittle.

8 May 1887.

been printed says that they are not unanimous, and that the representations now made come from a committee of the Chamber and not from a general meeting. I want to know on what evidence you state that to the Committee?—My suggestion was that, in order to have a full understanding of the effect of the change, a general meeting of the Chamber should be called. That suggestion was made to me by a Manchester merchant at the time, and I merely put it before the Board of Trade.

2419. I am anxious the Committee should clearly understand that when the Board of Trade asked that a special meeting should be called, the Chamber of Commerce did not think it necessary to call a special meeting as they have meetings every three months, and the action of the committee comes before the whole body to be considered; that would be a reason why no special meeting would be called?—Yes; I did not intend to presume to make any comment on the action of the Chamber. I simply referred to that as a suggestion made at the time in order to get at a clear understanding as to how the thing was to be worked. What I think has been the difficulty is that the large sectional interests in Manchester, the propriety of whose conduct I do not for a moment impugn, and who do not like trade mark registration, always remain, as it were, on the watch, and do not come to a permanent agreement.

2420. What evidence have you to give of this fact stated here: "It is to be noted that a portion of the "Chamber and a large number of the manufacturers, "as distinguished from merchants, are opposed to "the change suggested by the committee of the "Chamber?"—I mentioned Mr. Hoyle as one, and I have heard of several other manufacturers, Horrockses among others. Perhaps "large" is rather too strong a term to use, but they said they did not like it. That is a point I was coming to. All I contend is that a very active, and perhaps the most important and valuable section of the Manchester trade, did not like trade mark registration. I do not think that is a unanimous feeling.

2421. Is not that in consequence of the action of the Board of Trade in sometimes registering and sometimes refusing?—I think the action of the State generally has aggravated the matter very much from beginning to end. It has been very uncertain and fluctuating. My observations had special reference to a question of Lord Herschell whether the controversy might settle down if there were some undefined extension of the local powers. That is what I deprecate, and I submit, for the consideration of the Committee, that it would not settle down. The active section of the trade in Manchester, probably the majority, think that until they have the business in their own control they will not be safe. I do not say they are not right in that view; therefore any arrangement of that kind would be a half-way house, which would, I think, considerably damage the general working of trade mark registration.

2422. (*Chairman.*) But supposing that Mr. Fry or his successor were persons having special knowledge and experience with regard to trade marks as used in the countries to which the goods of those particular classes go, and bringing that special experience to his aid he formed an opinion, is it not conceivable that that opinion would be specially valuable to the office in determining whether they would accept the trade mark or not?—That depends on the grounds on which it is stated. If the Comptroller is to accept it simply because it comes from Manchester well and good.

2423. Is not there something between accepting it simply because it comes from Manchester and having the assistance of a person of special skill to advise you. The determination may ultimately rest with yourself and you may on some rare occasions differ from the person of special skill. But surely it does not follow that because you are to adopt the ultimate determination, and you may on rare occasions differ from him, you would not be the better for having his assistance?—We had it in 1884, practically, to a large extent.

2424. Your argument would seem to go this length, that in no case is it advantageous to have the guidance of some one who is a special expert in the matter with which you have to deal?—No, I never thought of stating terms that would be susceptible of that meaning. What I contend is that Mr. Fry's objections are founded on his knowledge of the resolution of certain firms there to object to marks which I do not think the court would refuse.

2425. I do not understand that it is founded on the objections of firms. I understand it is founded upon his judgment and from his own knowledge of the trade?—That may be; that was the impression left upon me working with him continuously. I was going to offer that case of Ralli's kettle mark as exemplifying the sort of things that they want done in Manchester, the attempting to do which only involves the office in legal difficulties. That mark No. 52,786 is objected to on the ground that a kettle mark is registered by them.

2426. (*Earl of Crawford.*) What is the objection to this mark?—That the kettle is the registered mark of Messrs. Ralli.

2427. (*Chairman.*) Is the girl a common mark?—They do not distinguish one girl from another.

2428. (*Baron Henry De Worms.*) The only question is whether the kettle is a destinctive mark, the girl being a common mark?—They contend that it is a common mark. They would not refuse all girls.

2429. (*Mr. Hutton.*) The primary view of a trade mark is that it is for the benefit of the trade?—Of the consumer, I think.

2430. Of the trade generally?—Yes.

2431. Therefore I suppose the trade know best what is wanted, and anybody having a knowledge of that trade will be better able to judge what would give satisfaction generally to the trade?—As a general proposition that is a safe one certainly, but as I ventured to say before, I think large owners are oversusceptible as to their marks, and if they are not themselves their clerks or their servants are. I have known people in alarm come about well-known marks, raising, I think, the most unfounded objections to other people's marks, objections which certainly the courts would not countenance. Therefore you cannot be guided by the mere opinion of the owner. He is over nervous.

2432. Take the very fact of the merchants themselves forming a body to consider the different trademarks. Their decision as a whole gave general satisfaction to the trade?—I do not think that can be said. I think that is pushing it too far. They excluded Glasgow, they excluded Leicester. It was only after some very heavy suits that the work got into working order at all. First there was the question of the division of class 23, all the spool tickets were put on the same footing as the yarn labels. The Brooks' fought that. There was a description of the goods finally settled which excluded 200 marks. Then there was the case of *Orr Ewing* v. *The Registrar* which was taken to the House of Lords. That gave the Commissioners of Patents the sort of liberty which they thought they had given away by their rules, they thought that they had no power to revise the B. list. There were a lot of things in the B. list which were not within the instructions given to the committee of experts. No attempt was made to revise that, but they were supported through thick and thin until the decision in the House of Lords in the case of *Orr Ewing* v. *The Registrar*.

2433. That was a single case. There were 170 cases out of 44,000; 634 is the actual number of marks originally returned in the B. list for class 24 and removed by order of Court.

2434. These are the words which Mr. Chamberlain used as regards the committee of experts: "I quite "agree that their work was most valuable, and no "Government department could have dealt with so

" complicated a subject without the assistance these " gentlemen gave us." Then he says: "At the same " time Mr. —— is aware that out of a great num- " ber of cases they had to decide there were a con- " siderable number of appeals, there were 170 " altogether, in which the decision of the committee " was reversed "?—I have the actual figures here. I find 634 in the two classes 24 and 23.

2435. Satisfaction was given to the trade?—Very valuable work was done. If the committee of experts had been willing to be guided a little as to their view of the law the thing might have worked very well, but they went on with what they thought was useful for the trade, as Mr. Fulda explained in his evidence before this Committee, and declined to go into such questions as to what was in the Act. In illustration of the point where a demand is made which cannot be fully complied with, I may mention these two cases. This is a registered mark of Ralli's with their name printed round it in various native dialects. It is called the Fakir mark, No. 24,632. The vessel he holds is not an incense vessel, but an ordinary fire bowl. This is the mark which was passed in 1884. These oriental characters are the name of Mr. Framjee written in Mahrati.

2436. (*Chairman.*) What inference do you draw from that?—That was a mark which was opposed. That is where Manchester was working to some extent with us, and willing to work, because the business was going on in a way that they found somewhat practical. If we could get a *modus vivendi* the thing would work. In that view I was going to suggest whether some understanding of that kind could be arrived at. First of all the trade mark system must be brought into better order, but if that could be done I should say it would be possible to work it in this way; let Mr. Fry remain in Manchester, and if they desire him to remain in Manchester (I think it is very convenient for him to be here) let the exclusion of the marks from the Trade Marks Journal go on, which is also a disadvantage to the trade. I think in many ways it is an inconvenience to the office, but it has been insisted on partly from the desire to keep the registration work in their own hands. Let that continue as it is. This course might be adopted. The ordinary objections being stated from London, and at certain intervals (Mr. Bailey says the question of time does not press), the Comptroller might visit Manchester, say, once in three months. I think the exceptional condition of the cotton trade, and the fact that the trade have such special views of their own would be sufficient justification in making that arrangement for Manchester without obliging the Comptroller to go to other great centres like Birmingham, and would not expose the Board of Trade to such a demand. The objection form might indicate either that the applicant should come to London for a particular hearing, or that the case should stand over for a hearing in Manchester once in three months. The introduction of the Palatine Court, I think, everybody agrees would be desirable. The assistance of the Palatine Court would be an immense help to the Comptroller. Then if the Chamber of Commerce were good enough to establish a committee of experts who would advise with Mr. Fry on these marks that were pending a good deal of work might be done, but it should be understood that they were to be an advisory committee, and, not as Mr. Bailey puts it, a committee whose "sanction" should be required in each case, because that makes all the difference. If the committee of experts had been content to advise they would have done a great deal of work, I think, more satisfactorily to themselves and to everybody else. If such an arrangement were not acceptable to Manchester I should suggest that the old plan, which I believe the great owners of trade marks cherish, of excluding cotton marks from registration altogether, was worthy of consideration. Lord Cairns objected to that scheme on the ground that starting a new principle altogether, and leaving out the great industry of which England is so proud, would be a serious discredit to the scheme, and it would not do. Notwithstanding the very strong feeling of the trade against trade mark registration, registration was forced upon them.

Mr. J. L. Whittle.

18 May 1887.

2437. I do not think we have had put before us by the Manchester trade any feeling against registration. On the contrary, I thought the complaint only was that, owing to variations in the practice of the Board of Trade and the course of their decisions, particular firms have ceased to register, but they would be only too glad to register again if more reliance could be placed upon the decisions in these cases?—There is a passage in Mr. Bailey's evidence where he expresses his own opinion that it would be better not to have registration, and I take him to be one of the best informed men in Manchester about trade marks.

2438. I remember his expressing an opinion that it would be better to have no registration than to have registration continued on the existing system, but I do not remember his saying that if you had a good system you had better have no registration at all?—At Question 760 Mr. Bailey is asked: "You mean to say " if the London office overruled the decision of the " recommendations of the Manchester representative " of the Board of Trade as arranged between him and " the Manchester merchants, fresh dissatisfaction " would spring up?—(*A.*) More dissatisfaction would " spring up. In fact, my own view is that we do not " want the 1883 Act at all in Manchester. Personally " I would prefer to have the whole of the marks of my " firm in the position in which they stood prior to the " passing of the Act of the 15th August 1875, because " we hold that we have better rights at common law " for the protection of our marks than we have had " either by the Act of 1875 or the Act of 1883. That " is my personal opinion of the matter. But the " Chamber of Commerce has not gone as far as that. " The Chamber of Commerce has taken up the " position that all the preliminaries of registration " should be done on the spot." I mention that as as showing what I believe is the feeling at the bottom of the minds of a large portion of the people there, which I submit might be worth respecting rather than attempting any fresh shifting. Well, then I would say in continuation, the trade mark system has developed in a very different way now to what it was 10 years ago. The law of 1875 has been practically adopted in one form or another all over the world. In 1875 Germany and Belgium were the chief countries having trade mark registration. The value of it to many of the commercial classes here is fully recognised, so that I do not think there would be a fear of the trade mark system being lost by any exclusion of that kind if it should be found necessary. Lord Macnaghten asked me the other day for some reference to the question of user of a mark. I find the case of Hayward *v.* Hayward, which I do not think has been reported, and to which I should like to call attention on the point that user should be on the goods. It is a decision of Mr. Justice Kay in July 1885. I think that principle will be found read into a great many of the decisions, but I cannot find one actually deciding whether user in an invoice should be recognised as a use of the trade mark or not, though I think it is assumed in a great many cases. It is a question about the use of words, and Mr. Justice Kay says: "I " understand that there is no doubt that the words " 'Hayward's coker canvas' were never in any way " used as a trade mark. They were never stamped " on goods. They were never advertised as a trade " mark. But people coming to the place could " inquire when the old firm was in existence for " coker canvas, and would ask sometimes, I suppose, " for 'your coker canvas,' or 'Hayward's coker " canvas,' but that is not using the words 'Hayward's " coker canvas' as a trade mark, and I cannot on " this evidence treat it as at all a correct statement, " or at all an accurate statement that this mark, " 'Hayward's coker canvas,' for the first time " registered on the 19th September 1884 had been " used as a mark."

Mr. J. L. Whittle.

18 May 1887.

2439. You do, now, if the name of the applicant is put before the word or words with an apostrophe, allow that as a mark, where you do not allow the word without the name of the maker, and the apostrophe?—That is so.

2440. I am not quite sure that I understand it. Is it supposed that that makes it a distinctive device?—That was a case submitted to the law officers as to what we should do. That practice had grown up as to a special use of the name.

2441. What is it supposed to be?—It is a name used out of the common. That is the plea.

2442. Under what sub-section does it come. It is not "a name of an individual or firm printed, im- "pressed, or woven in some particular manner," and it is not "a wrtten signature or copy of a written "signature"?—It is sub-section C.

2443. It can only be "a distinctive device, mark, "brand, heading, label, ticket"; and of course it is not a "fancy word or words not in common use"?—That was the theory on which the law officers said we might go on.

2444. You mean the theory that it was "a distinctive device"?—A word not in common use, that "Brown's ointment" was a novel combination, that is what it comes to.

2445. I believe you have made out a statement of of the work done, showing the increase that has taken place?—Showing the actual quantity of work last year. (*The same was handed in and was as follows.*)

TRADE MARKS, 1886. (CLERICAL STAFF.)

Total number of applications for the year, 10,677.

During the year 4,518 objections were made under either section 64 or section 72. Of this number 2,629 applicants accepted the decision of the Comptroller without attending a hearing; 1,889 applicants attended hearings.

The number of letters written was about 9,923.

Of these about 37·7 per cent. had reference merely to the *form* of applications or to the blocks for their advertisement. A large proportion of the requisitions for merely formal amendments are dealt with as post-scripts to the instructions for advertisement, which are not counted as letters.

The number of communications made by means of printed forms (filled in) was about 32,130.

The witness withdrew.

Adjourned to Wednesday next at 11 o'clock.

Board of Trade, Whitehall.

Saturday, May 21st, 1887.

PRESENT:

LORD HERSCHELL.
THE EARL OF CRAWFORD.
LORD MACNAGHTEN.
BARON HENRY DE WORMS.
JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

MR. EDWARD PICKSTONE called in and examined.

Mr. E. Pickstone.

21 May 1887.

2446. (*Chairman.*) I believe you belong to the firm of Robert Hopwood and Son, of Mosley Street, Manchester?—I do.

2447. They are manufacturers, with mills at Blackburn?—Yes.

2448. Have you had your attention called as a manufacturer of goods in what are known as the Manchester classes to the question of trade marks?—We heard last week for the first time that there was such an inquiry going on.

2449. The matter had been mentioned in Manchester?—Yes; it had been mentioned, but we do not profess to keep ourselves posted with everything.

2450. Your special attention had not been directed to it?—No.

2451. I was not speaking of the appointment of this Committee, but the subject of trade marks is one which has attracted your attention?—It has been widely discussed in Manchester.

2452. Are you acquainted with the character of the statements that have been put forward by the Trade Marks Committee of the Manchester Chamber of Commerce?—Some of them.

2453. Are you sufficiently acquainted with them to be able to point out in what respects you agree and in what you differ from them?—I think I can bring it before your minds with regard to one particular thing, and that is with regard to headings. I do not know that I have any fault to find with the Manchester Chamber of Commerce, or with their proceedings, except with regard to headings.

2454. What have you to say with regard to headings?—I maintain, and we are able to prove, that headings are of value, and of very great value.

2455. Therefore you mean provision ought to be made for their registration?—For their protection.

2456. Do you think that that is practicable?—I think so, under certain circumstances.

2457. In dealing with headings, it would, of course, be necessary so far to vary the procedure provided for as to include the colouring in the registration, I suppose?—Yes, the idea among some of the members is that you cannot deal with lines. You can get sufficiently distinctive evidence from colours and material that will make a heading look quite *different* altogether.

2458. But it would not be possible unless you make the element of colour part of the registration?—It would have to be part of the registration.

2459. When you say "material," what changes of the material do you refer to?—I was going to show something, if I might be allowed to do so. (*Producing a piece of cloth with a green heading.*) Here is a cloth that it has cost many thousands of pounds to establish in certain markets. In order to get this cloth as distinctive and attractive as possible, we found out a material that had not been usually used for headings before, and got it dyed, and got it to be worked, and therefore produced a novel effect altogether. The novelty consists of the rough part being thrown up and brilliancy of colour.

2460. The novelty consists in the character of this green stripe?—The character of the green, the good colour that you can produce, and at the same time the sort of roughness that there is there. If you get worsted, or cotton, or anything of that sort, it produces a smooth appearance. This is what I have to complain of with regard to headings and trade marks. It has taken us several years to get this cloth established. We have done a fair business. Then another individual steps in; and what does he do? He says headings have no value. If it were of no value, why does he copy this heading? This is an imitation of that, except that ours is brighter. Look at the general get-up of the ticket, stamps, and arrangement, and you will find them very similar. We say a heading is most distinctive as a trade mark. Out of seven inquiries that we had on the 18th, in five of them they brought the headings, just about a couple of inches.

2461. Brought the headings for what purpose?—To find out who was the maker of the cloth. It is the very first thing they do when they get a cloth back in Manchester to send the heading round to the different houses to see if they can find out who has made it. They do not all do as we do; we confine ourselves to one individual for a certain market. We do not sell to two individuals in the same market these special cloths. Therefore the headings and trade marks are of double value to us to what they may be to one who sells openly to anybody and everybody. May I be allowed to read this letter? "We are glad to learn from yours of yester-" day that Mr. Pickstone is to give evidence before " the Committee on Trade Marks in favour of the " registration of headings. Nothing can be so dis-" tinctive as a heading, and as far as the India " markets are concerned, headings have always been " recognised as trade marks. That they require " protection is proved by the many attempts that " have been made to imitate them. Very recently, " indeed, some of your own headings have been " attacked in India, and but for the prompt action " of our friends there your interests might have " suffered severely. We trust, therefore, that the " views supported by Mr. Pickstone may prevail." This is from one of the largest exporting houses in London and India. With regard to headings being of any value, I spoke to a gentleman we do a large business with in one of these cloths for Calcutta, and I put the question to him when I got Mr. Roscoe's telegram the other day; I said, "Supposing I take " away the heading from the cloth that we supply " you with and give you the stamps and everything " else." He said, "I will not have it." Thus showing that a heading is as good as any of their trade marks. Then I would go on further to say that if headings are of no value, why should these people want to come in to imitate us? Why should we pay 1,500*l.* a year, taking it at a very moderate price, as Mr. Hutton will tell you—taking the labour and the material of a piece at ½*d.* a heading, it would cost us 1,400*l.* or 1,500*l.* a year less if we dispensed with headings? I did not feel satisfied with the way that Committee was formed, because it seemed to be all one-sided, from the Chamber of Commerce with regard to the experts—that is, with regard to the headings.

2462. (*Mr. Hutton.*) In 1878?—Yes.

2463. (*Chairman.*) Do you mean that the manufacturers were not sufficient?—They were not consulted. Those interested in headings were simply told, "You must send all your headings in and apply for them." Who elected those experts? Of course, certain people with certain ideas. I do not mean to say that they did not all act conscientiously, but, as it proves, it was not doing justice to everybody, and especially some of those that are very much interested in headings. For instance, there is a firm there under the Act of 1862 who tried to register something. If they were of no value they would not go to the expense and trouble of paying to try and get protection. There would be no need for it.

2464. (*Mr. Hutton.*) I suppose you are aware there were several large manufacturers on that Committee —some of the largest manufacturers in Lancashire were on that Committee of Experts?—Yes, but they were not so much interested in headings. I do not remember who they were.

2465. Mr. Dewhurst was a member, and they are large manufacturers?—He was not a member as far as I know. They are under other names. I do not know that they are more interested in one than the other.

2466. Mr. Cheatham, the member for Staleybridge?—Yes, but he has nothing particular in headings that I am aware of.

2467. He is a very large manufacturer?—Yes, but probably there are certain classes of goods in respect to which he has not to depend upon trade marks or headings, though he was on the Committee of Experts.

2468. (*Chairman.*) I rather gather from what you say that it is not all manufacturers who are equally interested, but headings are more specially used by certain manufacturers in particular trades?—Yes, in certain markets; and some manufacturers will make anything, but we have established a trade, and it acts very hardly on those who have established a trade—who have made a special mark and special materials—that they should be imitated. I am going to read you something to show the effect of that. There are several letters threatening that they would do so and so. "27th January 1886,—Dear Sirs,—" Our friends write to us as follows:—Referring to " our late advices regarding the threatened opposition " by ——, we enclose copies of the correspondence " we have had with these importers during the week " regarding the sale by them of a T. Cloth." Now I will show how nearly the numbers come in some of them—"with a green heading identical with that of " our friends Messrs. Hopwood, which, as stated on " the piece, they claim as a trade mark. So far as we " know, they have so far only imported —— bales, " which they have sold at Rs. — without discount, " and on the 14th we telegraphed asking you to ad-" vise Messrs Hopwood of the imitation. We trust " our friends will be able to easily stop at home this " attempt to attack their well-known cloth, and at the " same time that they will send us full authority to pro-" tect and defend their interests on this side in case " of other attempts of a similar nature. Kindly com-" municate with our friends, and forward to them " the sample of ——'s cloth, which goes forward to " you by this mail. We may mention that Rs. — " is an extreme rate for such a quality as ——, " and has only been obtained in consequence of the " presence of the favourite heading, &c." Anybody that is a judge of cloths will find a difference of at least 4½*d.* a-piece. That is put on a lower cloth.

2469. (*Mr. Hutton.*) Do you only put this on one quality of cloth?—That is all.

2470. You keep that heading for that special cloth?—Yes, and vary it for different cloths; but we vary the numbers as well.

2471. Under what class would you register this heading?—It just depends. You do not mean to say that your classification is correct now? I should include that under the first-class mark.

2472. Not "class" of marks; but there are certain qualifications for cotton, and for silk, and for wool?—It is for cotton goods. Supposing I had put silk in, it would not interfere with the class of goods because they are cotton goods.

2473. I understood you want to register this on the ground that it is not made of ordinary cotton, but it is made of silk?—That is the novelty there is about it.

2474. How would you describe that?—As novelty of design we described it when we made application.

2475. Not material?—I think we did not specify material.

2476. Under the Act you must define the class, whether it is made of cotton or silk?—The goods are made of cotton. The heading has nothing to do with

Mr. E. Pickstone.

21 May 1887.

it. Supposing I had put gold in you would not say "gold." Many of our headings have gold in; but you would not put it under the class of gold because it had gold heading. It is the piece that it is a trade mark for.

2477. How should you define it? If you wanted to define it being of a special material, how could you define that for a trade mark?—I think very easily. It is sufficient for me to say that there is a heading produced in a certain way. I submitted it to a gentleman connected with one of the largest firms in Manchester, and he said, "I would try to patent this, "it is such a good idea."

2478. (*Chairman.*) What you want would be a ready means of preventing, by penalty or otherwise, an imitation of your heading which would be calculated to deceive?—Certainly. I want protection. There is a case where you have a heading, and although you have not the same article, you have such a close imitation of it that the poor consumer is deceived. The large distributor knows perfectly well, but it is the small individual who only buys his one piece perhaps every two years that is deceived, and those are the people we have to depend upon.

2479. Of course in your view this imitation could hardly have been hit upon by chance?—It was not.

2480. No doubt there are very considerable difficulties in registering headings on account of the difficulty of describing varieties and otherwise?—I do not admit that difficulty that some of our Manchester people want to make of it.

2481. Do you think it would be advantageous, supposing there should not be registration of the heading, to provide a penalty for an imitation of a heading?—Certainly.

2482. Of course that would not meet the case of an accidental similarity, but it would meet the case of anything that was obviously an intended imitation?—Yes.

2483. You think that that would be at all events more advantageous than not having any protection?—Yes; I say, and I still maintain, that my best trade mark is that heading, although it has got Robert Hopwood and Sons' name on it.

2484. (*Mr. Hutton.*) Of course you are speaking of this stamp as well—that is, a registered stamp?—Yes. The heading was refused, but I got the date when it was refused. I maintain this new Trade Mark Act has failed so far as headings are concerned. Well now, then, that might have been an accident or a combination of accidents, but this is the same market and the same individual. (*Producing two pieces of cloth.*) There is not as great a similarity there. That is our most favourite cloth, and one we should say is of the greatest importance to us. It is known all over the world. Now why could not they have had a different mark if they did not want to imitate us?

2485. Is that a registered trade mark?—Yes.

2486. At what date was that registered?—I cannot tell you from memory, but we can give you the exact dates and the numbers from the office. (Applied for October 21st, 1878, registered No. 24,312.)

2487. This is a registered mark also?—They say so. (It was applied for February 14th, 1883, registered No. 31,412.)

2488. (*Chairman.*) Just take this case as an illustration, do you say that supposing this heading were registered that heading must be refused?—Yes.

2489. Then it would be said, here is in the centre a broad pink stripe, whereas here there is a narrow white stripe and two broad greens and two narrow greens. No doubt one sees the general effect is the same, but it would be very difficult to deal with that by way of registering one and rejecting the other?—But see how it cuts against us. You have an article which it has taken years to establish. Why could not they have put a heading like this (*producing a piece of cloth*)? That would have been quite distinctive; but they have gone on that tack with a certain heading, and they find it does not do with that heading, and then they want another heading, so they change the heading to one of these.

2490. There seems to me to be considerable difficulty. When you see two pieces like these together and the general arrangement of the whole—the colouring and the general effect—the impression may be very strongly produced that the one is an imitation of the other; and yet if you simply had a heading sent in it seems to me you might have very great difficulty in determining whether one was an imitation of the other. If you put one by the side of the other there seems to be a great similarity, the general effect is produced by the whole thing?—Why is a figure put there?—Why could not they put something else?

2491. (*Mr. Hutton.*) If you were to register this how would you do it—so many picks to make the colour, or so much width?—I should take so much width of such-and-such a colour.

2492. (*Chairman.*) My difficulty is rather this, if you took the description of a piece of this, and then you described a piece of that, simply by the striping, your description might be a very uncertain description?—That might be; but I say you produce the effect. You have as many stripes as you like, but if you put that red does not it make a different effect altogether? You have nothing to do with the stripes, but you have to do with the effect.

2493. What I rather doubt is whether, if all that one saw were such a piece as would be sent in for registration, and compared it with another piece, one would say that those two were the same, or that the one was an imitation of the other. When one knows the way in which it is used, that it is put on a piece like this, with other things tending to similarity, and that it is sent to the same market, then one sees why it is done, and that the one is an imitation of the other?—Yes. We were threatened beforehand (*handing a letter to his Lordship*).

2494. (*Mr. Hutton.*) No Indian would buy this cloth for that?—But he has done so on the strength of that heading. My cloth is worth 4½*d.* a-piece more. They put a number of marks on which produces the effect on the mind of the buyer that he is getting something from another quarter to what he has had it before, of the same cloth, because it is the same heading, and it is got up similarly.

2495. (*Earl of Crawford.*) Does he put the same price on as you?—He gets as much as he can—he undersells us.

2496. (*Chairman.*) But still he gets a higher price?—A higher price in proportion than I can. He ruins our business, as a matter of fact.

2497. (*Mr. Hutton.*) It is the stamp coupled with the heading, I suppose, that really has a good deal to do with it?—They are always seeking the heading, ticket, and stamps.

2498. Supposing you register this, how would you describe it; because if this maker chose to put a red stripe instead of a green stripe that would destroy the similarity?—Not to a great extent.

2499. He has done so in this case?—He has reversed the order of things. You have narrow stripes there which has not the same killing effect.

2500. (*Chairman.*) If you analyse this it is very different to that; but if you take the whole together it looks like this a little faded?—Yes.

2501. That seems to me to create the great difficulty as regards registration, because you may have such very considerable variations and yet the possibility of deceiving. If because a previous one has been registered you reject all headings which differ as much as this does from that, you would very soon come to an end of the headings?—You would be surprised if you were to go through the Manchester trade marks to see, when you try to make a distinctive heading, how distinctly you can make it. It is only when they want to get as near as they can that they begin to assimilate.

2502. (*Mr. Hutton.*) Will you look at these headings (*handing headings to the witness*)?—The man

who first designed that has had others imitating him. I have found in other cases that I have had a number of people imitating me. They have all been slightly different, still mine has been the original one.

2503. These are the headings of a manufacturer which he puts on different qualities of cloth. Some manufacturers do that?—Yes, you will find that those are mostly for the home trade.

2504. How could you register shirtings with a gold heading?—Gold headings are considered common to the trade, and there are many gold headings; but nearly every maker has some slight distinction by which, together with the other mill marks, the cloth may be recognised. We do a trade in gold headings, and our heading is well known, as well as our mill marks, and our cloth may be identified by them. Our headings have been imitated, and they left off our mill marks, and the goods were refused in one instance.

2505. (*Chairman.*) They were recognised afterwards as not being yours by reason of not having the date and the other mark?—Yes, they had the heading and the heading sold them.

2506. (*Earl of Crawford.*) According to your idea the manufacturer should have his own protecting mark, and a trader might be allowed to have another one?—The trader may have what he likes.

2507. And he can stamp on your goods with your heading what trade mark he likes below it?—Yes. If it is not a special cloth, and if it is an open heading.

2508. (*Chairman.*) Do you ship yourselves?—No.

2509. As a rule, you send through merchants?—They come to us and buy direct. The general rule is for a merchant to come to a manufacturer. He will buy so and so of certain quality, and he will give you a heading. He puts any stamps on he likes. He goes on and he establishes a market. He establishes a trade. He comes to you for his cloth again and you put this heading on; or he goes to a manufacturer who will give him an equal quality. His competitors will come in and say, "Well, I see he is "buying so and so. Who has made this cloth?" The first thing they do is to cut a bit of the heading off and they go round and try to find the manufacturer. "This has been shipped by so and so?" "Yes." "Will you put us this heading on?" Well, if there is no arrangement, and they say, "Yes"; or if there is an arrangement, "No, it is engaged."

2510. That is by arrangement with the merchant?—That is by arrangement with the merchant. We protect all headings that come to us that we are asked to protect.

2511. (*Earl of Crawford.*) When you sell your cloth you send it out of your warehouse with that and with that and with this on as well?—Yes.

2512. And you do not let your cloth out without an impressed mark as well as a heading?—Everyone of those has to be on, so far as our special clothing are concerned.

2513. (*Mr. Hutton.*) If I come to you and want to buy 2,000 pieces of that cloth, you do not put that stamp on?—I beg your pardon, you would not have the piece without. We make it absolute. We confine that in one market to one individual; we confine it in another market to another individual, that heading, that cloth, and that stamping, so long as the arrangement lasts.

2514. So that you will not make that cloth for any other person?—Not in that market.

2515. (*Lord Macnaghten.*) Is it a common thing among manufacturers for them to insist upon the goods that are made by them bearing your own stamp or mark or heading?—It is a matter of arrangement entirely. For instance, if you were to come to our place you would perhaps find there is one cloth which we have not in stock. We say we have so and so in stock with such a heading on, which is acknowledged by the trade to be an open heading. There is no speciality about it; it is a broad red. We say, "We have so and so," "Well, but," you say, "I "cannot do with that heading, it will not do at all for "my heading." "Very well, then, we cannot do "business unless you give us time to make." Well," you will say, "I want a Ceylon heading"—that is, a double heading, one with eight cords of grey and then comes a gold heading parallel.

2516. (*Chairman.*) That is a common heading?—They are both open to the trade.

2517. Then there are certain headings that are common to particular markets?—Yes.

2518. That would be like Class B. Distinctive marks belonging to houses were put into Class A. You say there are certain headings which are common to the trade, and, therefore, they should be so classed that anybody could use them and without protection?—Yes.

2519. And that which is distinctive of your special house should have a distinct protection against piracy?—Yes. Not only ours but others, also where the maker or merchant claims a speciality.

2520. (*Mr. Hutton.*) Is not that a difficulty in which the Committee of Experts were when they commenced their work, there was something like 11,000 or 12,000 headings?—On that Committee they wanted to have the run of everything they could see; therefore they decided that all should be open headings. For instance, there is a distinctive heading I would say under some circumstances, but, as you very justly mentioned, a gold heading is open to everybody; there are no less than, I should think, 50 different kinds of gold headings that were all considered open by the trade. We have tried to make this of ours a distinctive one, and it speaks for itself although it is not registered, and we have never applied for it.

2521. You would then register a heading simply from the general appearance and general character of it?—Yes; you have to sell everything by the general appearance.

2522. Would not that come more under the Designs Act?—They talk about stripes, you cannot reckon stripes. Supposing I went and made a yard of that?

2523. Under the Designs Act you could register it?—Would not that be a distinctive heading as against that, if I made this five times as big?

2524. Then it would come under the Designs Act?—You may put it under the Designs Act. If you put that yellow where that is mauve, and this black where that is green, then you get a different effect altogether, although the design is just the same, the effect will not be the same.

2525. The difficulty is how to describe it?—I do not care about the description if I get the effect.

2526. You cannot register style or effect?—Yes, you can register effect. If nobody is allowed to make a heading like that or a colourable imitation, why, then, should not you have protection? If you cut my heading off you cut off all my work for years.

2527. You might find that one weaver whom you ordered to put in 50 picks of yellow knocks it up into a quarter of an inch, whereas another weaver spins it out for an inch?—Yes, this is all matter of management.

2528. How would you register it?—We have a shed of 1,500 looms. We give one heading out to one corner of the building, and another to another corner, and we say, "You must make it like that." If they make it and it is not like it, we throw it on one side. They must produce a certain effect.

2529. (*Chairman.*) This seems to me very well to illustrate the difficulty of registering, because if you take a little piece of this heading and compare it with a little piece of that, I do not think it strikes one as similar; but if you take the whole length of the heading coupled with this second line, the effect undoubtedly, to my eye, is that it is extremely similar. I think that similarity arises from seeing the long line of it. I mean that the long line of it produces a different effect?—Yes, you are looking at it with an artistic eye.

2530. No; what I mean is this; the similarity is apparent when you have the piece, but is not apparent

Mr. E. Pickstone.

21 May 1887.

if you merely compare, say, six inches of that heading, say, with six inches of this. It illustrates the difficulty of dealing with it under a system of registration, because all that you could require to be registered would probably be a small piece of it; it would be impossible to register a whole length?—If I might make a suggestion, there is nothing could be better done than was done when the headings were first sent in. We sent the whole of those along with the combination.

2531. You mean you sent the whole length?—A pattern like that when we made an application for registration.

2532. Somebody else sending this in for registration—— ?—Would have been refused, of course.

2533. Would it be refused? That is what strikes me as doubtful. You could hardly provide that when a man registered a heading he should put on it every trade mark that he was going to use with it?—There is another point that arises, and I dare say Mr. Hutton would bear me out in this; some people speak of separate things and other people speak of combinations. That is the form in which we applied for it; we applied for it separately and in combination, so that if there was a weakness in one part we wanted to cover ourselves in the other. I merely brought these patterns up to show you how, if you are not to take any notice of headings, an individual firm may have been fighting for seven or eight years, and spending a lot of money, as we have, and then somebody else will come and reap the reward.

2534. (*Mr. Hutton.*) About how many headings have you altogether?—I should think we have about 10.

2535. That is specially reserved headings?—Yes.

2536. I think Mr Hoyle said he had something like 2,000?—But Mr. Hoyle makes for a lot of markets.

2537. I asked the question for this reason; the difficulty with a very large number of manufacturers in Lancashire is that each one wanting to register his own headings, we should have some hundreds of thousands of headings?—I dare say there might be a hundred thousand. But you will find, I think, that the five red carries the most in the T cloths markets and the gold carries the most in the shirting markets, and they are reduced to two open headings. If you make a special quality, and put a special heading on with a special design, and the public's attention is called to it, that is another thing; they are only a few.

2538. The resolution which was passed by the Committee of Experts was this: "That owing to the "great difficulty of coming to any decision whatever "as to the merits of woven headings, the Committee "of Experts have felt themselves compelled to place "all woven headings in the second class." That does not deprive you of the power of proceeding against anybody for pirating your heading?—Not under the old Merchandise Act, it does not.

2539. If you like to devise a printed heading with a distinct character or design, that might be treated as a trade mark?—Yes. Why should you be compelled to go to the expense of printing?

2540. Instead of stamping your cloth with this trade mark, if in addition to this you put a stamp along here with some special design, you might register the printed one because it has some special feature?—Yes. I know several of them have done so. But you know that is putting you to extra expense again.

2541. No more than stamping this?—You cannot stamp the whole length like that with a heading to make it, what I call, artistic without great difficulty and expense. They have to be done separately.

2542. I suppose there is no possibility of devising something by machinery; it would be too expensive to weave a jacquard; you would want a jacquard?—We could do it in one way, but it would cost us many thousand pounds to fit up a big place with special dobbies.

2543. Just a small dobbie would do it?—We have about 300, but none that would answer the purpose.

2544. If you brought out some special design by a dobbee and wove the heading in in that way you could register it?—We brought out some special designs and they went and copied it the first thing.

2545. You could register one?—I do not think so, they have refused everything that we have put in.

2546. Are you a member of the Chamber of Commerce?—Yes.

2547. (*Earl of Crawford.*) Supposing you wanted to get this registered, would you take this, as you see it here, and register that as your heading, or would you go to the office and say that is my heading?—We have sent it both ways.

2548. Which do you want to have protected?—We want them both.

2549. You want to have that by itself, and any other thing you like to stick on?—Yes.

2550. Or that anybody else may stick on?—Yes, if we claim the heading.

2551. You might, in course of time, consent to sell cloth with this heading on it without that special thing?—Yes.

2552. That would stamp it as being your manufacture?—Yes.

2553. This would stamp it not only as being your manufacture, but as a certain guarantee?—Yes, as to quality and everything.

2554. Therefore you would want a double register?—That is so. Everyone of these stamps is registered by itself, and has been applied for in combination; there has been so much uncertainty about it that we have spared no expense in order to be able to protect ourselves.

2555. You would be willing to pay a fair amount to obtain a reasonable amount of protection?—Yes.

2556. (*Lord Macnaghten.*) Is this particular heading, which you showed us, a very exceptional case? Do you think there are other manufacturers who have a heading equally distinctive?—There are other people who are equally inconvenienced, and who have had to lose money as we have; but, perhaps, none have been placed in quite the predicament that we have been placed in. We specially lay ourselves out for certain markets. This heading is of as much importance to us as any of the other trade marks, and it would be just as important to our customers. The headings are of the greatest importance.

2557. (*Chairman.*) I do not think much doubt has been expressed to us as to the importance of headings, but what has been strongly represented to us has been that the registration of headings as trade marks would not be practicable. That is the form which the representation has taken?—I am quite sure it is practicable if you will take this into consideration that they are to be governed by effect and not by stripes or by designs. Here is a certain thing, if it is made twice as big it is not like it although objectionable; you get a different effect; and if you put red in place of green it is not like it in effect.

2558. (*Lord Macnaghten.*) I suppose you quite agree that it is impracticable to register all headings?—Yes.

2559. Or even the majority of them?—Yes, the majority of headings, so far as I know, would be practicable enough if people would only deal honestly one with the other.

2560. (*Mr. Hutton.*) You said just now that if the heading were double the size it would not much matter?—Yes. If put in different colours, say, red in place of green.

2561. Supposing I make a cloth with a heading double that size and ship it out to Rangoon, is not that almost pirating yours?—The effect would not be the same, it would be a larger thing altogether if you made it one third larger or one half larger, but what you have to look at is what would be the effect on the mind of the man who bought it. If he thought it was ours he would be deceived.

2562. Would not the native of India or Rangoon

be in doubt about it? Whether the stripe were an an inch or two inches he would simply recollect that it was a green stripe?—The Indian has a discerning eye, no doubt, but he is not so discerning but that he would think that that was intended for the cloth that he buys.

2563. But suppose he made it double the size?—Then there would have been fewer culprits than there have been; but they have made it exactly the size. Make it five times the size then the effect is different. There is a very insignificant black line in this that is put in the copy.

2564. Is that to distinguish it?—No, it is intended to look the same as ours.

2565. Suppose a man imitated yours and made the green a shade darker or two shades darker?—We found out that they had been trying these in wool in some markets, but could not pass the goods for ours on account of the effect not being the same.

2566. (*Chairman.*) You have now put your views before us, is there anything else that you wish to say?—I do not think that there is anything further.

Mr. E. Pickstone.

21 May 1887.

I submit that I have established the fact that, whatever anybody else may have said before, a heading is of value. We maintain that a special heading is the best trade mark that we have. As to imitations, there are perhaps a dozen people that we have had to go to and who, as a matter of courtesy, have given it up, some of them after we have threatened them and some before.

2567. Did you threaten proceedings against them?—We told them that we were prepared to defend ourselves and assert ourselves. It was all agreeably arranged between the manufacturers and the shippers and ourselves. They showed us the substituted heading that we approved of in the imitation just spoken of. We felt the heading to be of such vast importance to us that we let the similarity in the other marks go in preference. We thought it was not right to put on these trade marks; and we should not have done such a thing ourselves.

2568. (*Earl of Crawford.*) Still, you regarded the trade mark as a matter of secondary importance?—Yes, in this case.

MR. SAUL BENJAMIN BIGIO called in and examined.

Mr. S. B. Bigio.

2570. (*Chairman.*) Are you a manufacturer?—No; I am a merchant, a buyer of Manchester goods.

2571. I believe the evidence you desire to give to the Committee relates to headings?—Yes.

2572. Do you consider headings, when they are distinctive, of importance to manufacturers?—Most important to manufacturers and merchants.

2573. Are they regarded in the trade abroad, in the countries to which the goods are exported, as indicative of the maker, and therefore of the quality of the make?—It is so. In fact, when a piece of cloth is introduced into a foreign market the very first thing that a buyer would be induced to look at, or that will attract his attention, is the heading, and the moment he sees a novel heading he begins to examine into the cloth as to its merit. The heading is a most important element. That is my experience.

2574. (*Mr. Hutton.*) Do you mean a new heading?—A new heading. Any heading newly introduced at once induces the various buyers to examine into the cloth, and when once that heading is liked that heading will always sell until it is found out that the cloth has deteriorated in quality. A buyer will come from the interior and ask for a certain heading that has already been established and has a reputation, and all he looks for is the heading, and he sees that he gets that heading whether he requires five, ten, or more pieces. I am speaking of the Turkish markets, not of the Indian and Chinese markets. We send cloth to different parts of Turkey and different parts of Persia and different parts of Egypt. The buyers from the interior will send orders to their agents in town—Buy me 10 or 30 or 50 pieces of a heading which they generally christen by name. They will take, for instance, Mr. Hopwood's heading; they will call it by a certain name indicative of the cucumber peel. That is how they will word it; or the orange peel, and so on. The green line is the cucumber peel They generally christen headings; they cannot describe them. In some cases he will say, Buy me three lilacs, or four reds, or two greens, and so on; and anything that is very specially appreciated by them they will give it a certain name or title. Consequently the buyers do not look as much for a stamp as for a heading. In my experience, I some years ago got a piece of silk from Damascus of native workmanship and gave it to a firm in Manchester to get up as a heading for me something like it. I gave them an improvement upon it myself, so as to meet the requirements of the natives as my own experience told me, as I knew their tastes and requirements. They made me that heading, and the firm —which was a very honourable firm—promised me never to use that heading for any other buyer, and loyally fulfilled their promise. I bought the cloth and sent it abroad, the cloth being of a superior kind. I am sorry I did not bring it with me. It took in the market at once; the consumption of it began to increase considerably, but it was not six months before I found every maker in Manchester beginning to make that identical heading exactly.

2575. On lower cloth?—On lower cloth. It kept depreciating. I started the cloth a 7 lb. T cloth—you know the value of it—I paid 7*s.* 6*d.* for a 7 lb. piece of that cloth. At that time middling Orleans was about 5½*d.* I sent the cloth to various Turkish markets, and I began to acquire a fairish profit, 3*d.* a piece or 6*d.* a-piece now and then. The consumption increased in the course of six months from 200 pieces a-week to 2,000 pieces. Soon after that six months had elapsed it began to decrease by degrees until now with me it is almost *nil*; but with other people, for lower cloth still, it is going on in small quantities, and instead of the heading having a good reputation it has now just the opposite. I may tell you that one of the reasons that English production has got into bad repute abroad is partly owing to headings, inasmuch as when a heading is introduced upon a very good cloth, and a valuable cloth, giving good value for the money, very soon after, when it is found out that that cloth is making headway in different markets, the unscrupulous merchant or manufacturer, whoever he is, wants to step in and reap the fruit and the benefit of the former and better manufacturer. He is naturally anxious to produce a lower cloth and use the heading which is only applied to the best cloth. Consequently, instead of that manufacturer making a cloth with his own heading, though, perhaps, he could make as good a cloth, he will not do it, because he has the means of palming a lower cloth off at a better price for the time being. Whether it is the fault of the merchant or of the manufacturer that I am not going to say. But it is conducive to reducing the quality of the English production. On an occasion of one of my visits abroad, going through the bazaar, I saw a group of buyers, who called me in, showing me a heading. The dispute was as to the quality which the native dealer got from the merchant who imported his goods from Manchester. One of the dealers stated that some time ago when he began to buy that heading it was a cloth for which he had always got repeated orders from the interior. He had a sample of it, a piece left in his shop. He brought that piece before me, and he said, "You are a merchant. There "is another piece of the same heading which I "bought for the same cloth, and now look at the "difference in quality, and just give me your judg-"ment." I looked at the cloth. I saw the headings were identical, but the cloth was far different. There was a different stamp on it as well. But the native

Mr. S. B. Bigio.

21 May 1887.

cannot read; 9 out of 10 cannot read what is on the piece, whether it is Bigio Brothers or a similar name or another manufacturer. All they look for is the heading, and the heading is a great indication for the ignorant native.

2576. How would the native distinguish in the registration of a heading between the cucumber peel and the orange peel?—By the appearance of it. When a new heading is introduced into the market the buyer comes in and looks at it. He wants to buy a few pieces, we will say, and send it to his customer in the interior. I have seen them. "He says, "I have "bought you five pieces on experiment." He gives his own name to it. He will christen it himself. Sometimes they christen it as a favourite dish of his or something very superior. He gives it a title, and that cloth goes by that name.

2577. But what do you say as to the registration of headings?—In my opinion a heading ought to be registered and could be registered. If I chose to-morrow to manufacture anything that has not been seen before, why should not I have the right to it? I am not speaking of the old headings of which you have an idea that they are all similar and alike, but I am speaking of this. Suppose a skilful man got something the like of which has not been seen before, why should he be debarred from obtaining protection? I have myself introduced into the Turkish markets several new headings, and had to sell the goods at a great sacrifice in order to establish the cloth, and in no case have I reaped the benefit. Simply the first imitators have reaped some benefit at my expense by palming a lower cloth with that heading, and that is all.

2578. (*Baron Henry de Worms.*) Then afterwards the inferior quality became so well known in the market that no one bought it?—Yes; they buy it, but the price keeps reducing, the cloth keeps going down in quality. The manufacturer who starts to imitate makes a reduction of 3*d.* in the value, his neighbour goes imitating him, reducing it another 3*d.*, and his other neighbour reducing it another 3*d.*, until the cloth begins at 7*s.* 6*d.* and gets to 4*s.* Then the thing dies out and something else comes in, and so it goes on.

2579. Is not it a fact that they not only buy or rather give orders by description, but they cut slips off with the heading and send them to Manchester, and say, "Send me so many pieces of that"?—Yes, that is so. I am a buyer in Manchester, and all the orders I get for T cloth is an inch of a heading. They say, "Send me this heading." As a merchant, and knowing where to put my hand on the cloth at once, the moment I look at the heading I know whose make it is in many cases. I am speaking of T cloths and domestic cloths. The heading is a very great indication.

2580. The order copied by some unscrupulous person would injure you in two ways. First, he would copy your heading from the sample, and then he would send an inferior quality which was not per sample?—Certainly it is so. He reduces the quality and uses the heading of a superior quality and palms it off on the natives for the time being. Then the native abroad has got an idea that one heading is made in one mill and never in another, and they begin to say that their manufacturer began with a good cloth and reduced it himself. They scarcely understand that it is done by another manufacturer. The shipper in Manchester will condescend to write and say, "I bought your heading and identical cloth from "the same manufacturer at 3*d.* and 1½*d.* per piece "less than our opponent," whereas he has actually bought a lower cloth from a different maker but with the same heading. Their opinion abroad is that the original maker himself has made the reduction in quality unknown to the shipper. As for a stamped heading, I have heard Mr. Hutton speaking of that. I tried that experiment myself, and I have tried also without a heading at all. I have done it often, and tried to impress upon them the importance of it. The reply was: a stamped heading would do very well on white calico, because it makes such a good impression, but a stamped heading can never make a good impression on grey rough cloth. The effect will not be at all nice. I dare say Mr. Hutton will bear me out in this; when you have a stamped heading on a grey calico it does not absorb the colour so solidly in order to show a good effect. In white calico, of course, it does, and it makes a very pretty effect, and it is acceptable by the natives in the case of white, but in the case of grey they will not have it. I have tried to do away with headings altogether. The reply was, How do we know into whose hands that piece passes? There are so many dealers and so many buyers, and they are afraid, in a 24-yard piece, that any intermediate agent might cut half a yard of it off. There is no indication for them to show that the piece is complete. You must bear in mind that a piece of calico goes first to the importer from Manchester, and then to another buyer or dealer, and then goes to the interior to another dealer. It goes through various hands, and the last man may be cheated, or he thinks he may be cheated, out of a yard, or half a yard, or a quarter of a yard. The moment the native takes a piece in his hand he looks at the heading at the two ends of the piece. He will find at the end of each piece there is also a narrow stripe of some colour besides the heading; the inside heading also has a mark. The natives know very well there is a warp mark, a sort of blue or red blotch, or a line of some colour. They must see the two ends of each piece complete, made by the manufacturer. They have another reason: where there are two headings, which are, of course, made by the manufacturer, they are certain, even if a piece is made for 24 yards and it comes out a little piece less, 23¾, they know very well that piece is worked for 24 yards, and although it is less now, yet when it is washed out it will give the same length as if it were 24. That is the explanation given to me. A heading is indicative of completeness of the piece. That is a most important element with the natives.

2581. Do you mean it is taken to define length as well as quality?—Yes, it identifies the cloth.

2582. (*Chairman.*) You said you had tried it without headings; what was the result of that?—It was absolutely impossible, because there is no check as to completeness of piece; and not only that, but they said the piece looked very ugly, they called it like a beautiful woman without hair on. That is the description given me in their letter. When I wrote, that is the reply of my customer. They say, What is the use of sending a beautiful piece like that but short of its ornamental part?

2583. Is there any other point to which you would like to call our attention?—No.

2584. (*Mr. Hutton.*) Could you help the Committee by suggesting some mode in which registration could be effected? Considering the hundreds and thousands of headings there would be, how could the Board of Trade deal with such a large number to register them, because every large manufacturer who sells in Manchester must have several thousands of those headings?—Old headings, and common headings which are known in the market as common headings—there are plenty of them—of course are everybody's property; but there are even now special headings, where the owners and originators of them are well known, and they ought to be protected.

2585. (*Chairman.*) How would you define a special heading? What would you indicate as the particular features of a special heading?—The combination and the size of the stripes, or whatever it is, can be by experts defined. I am sorry I cannot exactly give you particulars, but I have not the slightest doubt that the thing can be done by defining.

2586. (*Lord Macnaghten.*) Would you only provide for the registration of every special and distinctive heading?—Most decidedly.

2587. Not for all headings?—No, anything special and that has its own feature.

2588. (*Earl of Crawford.*) In that case would you say that the way to register a heading would be to give it in writing such a description of the heading as would enable anybody else on reading that description to colourably imitate it?—Would that be a fair thing?—Perhaps so. I may suggest, how will it do, if that will get over some of the difficulties, to register headings together with markets? A man dealing, for instance, with China may register for China, but in other markets that do not clash with China at all to have that heading free. Perhaps that would reduce the difficulties.

2589. Supposing you have dealt with China a certain time, and Mr. Pickstone was dealing with Rangoon, you might both possess the green mark; but supposing after a while you wanted to extend your trade?—Then you must not use it for any other market but for that which you register it for. That may reduce the difficulties of registration.

2590. (*Lord Macnaghten.*) Do you think it would be satisfactory to register for a particular market?—I think it would be satisfactory.

Mr. S. B. Bigio.

21 May 1887.

2591. It would be a step?—It would be a step towards reparation, inasmuch as the first man that does imitate imitates for the same market, but if he knows very well he cannot do it for that market he must introduce his own heading. Then in the case of a man who deals with Turkey, and another who deals with Java, for instance, there would be no objection on the part of the Turkish merchant to allow the other to go to a different part of the globe.

(*Mr. Picktone.*) Ours go to 63 markets.

(*The Witness.*) You will find each market starts with a special heading.

(*Chairman.*) I understand you send goods with the same heading to a great many different markets?

(*Mr. Pickstone.*) Yes, we do.

(*The Witness.*) I do the same. I send the same headings to different markets. I have seen stamps that were imitations of ours. I did not object to their being used when they did not clash with my interest. The heading would be the same. A heading going elsewhere would do no great harm.

Mr. JOHN C. VOCOTOPOULOS called in and examined.

Mr. J. C. Vocotopoulos.

2592. (*Chairman.*) Are you a merchant in Manchester?—Yes.

2593. Dealing in cotton goods?—Yes.

2594. I believe you desire to give us some evidence with reference to the question of headings?—Yes.

2595. In your judgment is the heading of great importance in the export trade?—It is.

2596. Is much mischief done by the imitation of known headings?—Very great mischief.

2597. Do you think it would be practicable to register headings in the same way that trade marks are registered?—I believe so.

2598. Would there not be considerable difficulty in this, that two headings which, when looked at in connexion with the circumstances of the goods being sent to the same market and otherwise, and the general arrangement in relation to the trade mark, might satisfy you that the one is, and is intended to be, an imitation of the other might yet look very dissimilar if you looked only at a piece of each heading sent to be registered?—I would not register all headings except they are very distinctive indeed.

2599. Just look at those two (*handing headings to witness*). In that case do you say that this heading, if sent to the same market as this heading was known in, would be calculated to deceive?—I think so.

2600. Yet if you examine simply a piece of this heading and compare it with a piece of that heading they are very considerably dissimilar?—They go more by the general appearance of the thing.

2601. Would it not be rather difficult to determine merely from two pieces being sent for registration whether there was such a similarity as would be likely to mislead? For example, if a person who was desirous to register this heading was really intending to send it to a different market altogether to a person who registered that, might not this have been hit upon without any intention of imitating that?—It might.

2602. Would not that seem to create a difficulty with regard to registration?—I do not think so. That would depend on the opinion of the Registrar.

2603. Would it not be very difficult to form an opinion?—I do not think so.

2604. You hardly call that a very distinctive heading?—No.

2605. What kind of heading would you call a very distinctive heading?—Fast colours, such as red and yellow combined with blue; colours like this. This I would not call distinctive; not in this combination.

2606. Would you call that a distinctive heading?—No, if there were anything in the middle—red or green—I would call that distinctive.

2607. This particular rough kind of green is distinctive, is it not?—Yes.

2608. I suppose, in considering whether it was distinctive, you would take all the elements into consideration, and not merely colour?—Not merely colour, I would take the combination of colours.

2609. And not merely that, but the material?—Yes.

2610. (*Mr. Hutton.*) That as a heading in cotton you would not consider a distinctive one?—Not very distinctive.

2611. And yet that is the heading which we have had in evidence is the most valuable?—It may be.

2612. (*Lord Macnaghten.*) Are you familiar with that particular heading? Does it strike you as something new?—No it does not; I have seen it in Manchester.

(*Mr. Bigio.*) I may say this is a most distinctive heading, although I never bought it; very few people have done such a thing; it is the first time I have seen it; it is most distinctive.

2613. (*Lord Macnaghten.*) (*To the witness.*) Having had your attention called to the rough material, you think it is distinctive?—Yes.

2614. (*Mr. Hutton.*) Would it be so in the eyes of the native who bought it if it were made of cotton or wool or silk? Does the native look at the effect of it?—Yes.

(*Mr. Bigio.*) They go so far as to look even at the curl of the fringe; that is an indication of the quality of the warp—a good warp gives a certain curl. They are most acute in their observations with regard to that.

(*Earl of Crawford.*) The native examines the thing most rigorously?

(*Mr. Bigio.*) Yes.

(*Mr. Hutton.*) I dare say Mr. Pickstone will tell us whether, if he were to put mineral salt in, it would curl up?

(*Mr. Pickstone.*) It just depends on what sort of process you put it through.

(*Mr. Bigio.*) I have very often tried to get a cloth made by another manufacturer with that curl, and he could not do it try as much as he could.

(*Mr. Pickstone.*) It might be a want of twist in the cotton spinning; if you get so many turns to the inch it will produce a certain effect.

2615. (*Mr. Hutton.*) (*To the witness.*) How would you, in registering these two patterns, distinguish between them? Here are two headings very similar in effect, this one is registered, and that one the man wants to register; how would you distinguish them?—It is rather difficult.

2616. (*Chairman.*) You mean simply from the appearance?—Yes, I would leave it to the Registrar.

Mr. J. C. Vocotopoulos.

21 May 1887.

2617. (*Mr. Hutton.*) How would you distinguish in registering these two? The general effect is similar, but how would you distinguish them to obtain the object which is wanted?—That again is a detail which I would leave to the Registrar.

2618. You would leave that to the Board of Trade?—Yes, to the Registrar.

2619. (*Earl of Crawford.*) You think it ought to be done, no matter how it is to be done?—It ought to be done.

2620. And you leave all the responsibility of finding out how it is to be done on the authorities?—On the Board of Trade.

(*Mr. Bigio.*) Even if existing headings cannot be dealt with, why should not the new ones; why should not a man, introducing new machinery to have a different effect to what is in existence, have the right of doing it?

(*Mr. Hutton.*) There is the right under the Act if it is a distinctive design or feature in the heading.

(*Mr. Bigio.*) I think not.

(*Mr. Hutton.*) In the resolution passed by the Committee of Experts they specially reserved a distinctive design.

(*Chairman.*) There is no law at present to that effect.

(*Mr. Hutton.*) Under the Act you can register headings. It is, "Headings with a distinctive character or design."

(*Mr. Pickstone.*) But the Committee of Experts threw us all out. They said we had not any distinctive headings. I maintained that is a distinctive heading, and I applied for it and they told me no.

(*Chairman.*) But you have not applied to register this under the Act of 1883?

(*Mr. Pickstone.*) 1875 it was, not 1883.

(*Mr. Hutton.*) But the experts sat for three years?

(*Mr. Pickstone.*) Yes.

(*Mr. Hutton.*) How many years do you think the Board of Trade would have to sit with hundreds of housands of headings?

(*Mr. Pickstone.*) The Board of Trade might reduce it to a very small compass by appointing certain individuals not all from one side, as the experts were before, but getting some on my side and some on your side and some on Mr. Hoyle's side. I do not see why a heading so distinctive as that should not be made at once and protected to the individual who invented it. It took the people who got so near as that many years to find it out.

(*Lord Macnaghten.*) I understand you did apply under this Act for registration of that heading?

(*Mr. Pickstone.*) Yes.

(*Lord Macnaghten.*) What answer did you get?

(*Mr. Pickstone.*) They could not register them.

(*Lord Macnaghten.*) Did they send you a formal answer to say it could not be done?

(*Mr. Pickstone.*) Yes.

(*Lord Macnaghten.*) Have you got it?

(*Mr. Pickstone.*) I have not got it here.

(*Chairman.*) What date was that?

(*Mr. Pickstone.*) Various dates; I believe we applied for that in 1878.

(*Chairman.*) Will you let us have the answer?

(*Mr. Pickstone.*) I will send it you.

(*Baron Henry de Worms.*) Do you remember the ground of refusal?

(*Mr. Pickstone.*) That it is straight lines, that it is a matter of lines, that is all.

(*Earl of Crawford.*) And because colour is not to be allowed?

(*Mr. Pickstone.*) If you take away lines and colours, how are you to get any distinction?

(*Chairman.*) That is perfectly true, and, therefore, according to your view, if you are to register headings at all, it will be necessary as regards headings to alter the Act by making the colour an essential part of the registration.

(*Mr. Pickstone.*) Just so, that is where the Act is deficient.

(*Baron Henry de Worms.*) Do you know that colour is not registerable now as part of a trade mark.

(*Mr. Pickstone.*) Under the new Act no; but under the Merchandise Act we say yes.

(*Mr. Bigio.*) I am going to make another suggestion: how would it be, supposing a heading is registered only when applied to certain yarns—suppose Mr. Pickstone wanted to register a heading for a cloth that is made of 20's and 24's, that it should be confined to him for that number of yarns and nothing else.

(*Lord Macnaghten.*) That would give the person who wished to put the same mark on an inferior cloth a legal right to do so.

(*Mr. Pickstone.*) It would not do at all, it is impracticable.

(*Mr. Hutton.*) Under the old Act could you defend your mark by going to law?

(*Mr. Pickstone.*) Yes, under the Merchandise Marks Act—that is what we are informed—where you can prove that a mark is of value to you.

Mr. J. Cutler.

Mr. JOHN CUTLER called in and examined.

2621. (*Chairman.*) You have, I believe, given considerable attention in your practice at the bar to the question of trade marks?—Yes, I have; and, as your Lordship is probably aware, some of the clauses in the present Act were originally drafted by me. I also drew a Trade Marks Registration Bill in 1874, or the beginning of 1875, for the Associated Chambers of Commerce. From that time down to the present I have taken very great interest in the matter, independently of having a certain amount of business in trade mark cases.

2622. I believe the first point to which you desire to call our attention is the desirability of further defining fancy words?—Having regard to the fact that the Committee has already heard, as I have reason to believe, a good deal about fancy words, perhaps you would allow me to take one or two of the later points of practical importance first, and then I should be entirely in your hands as to how much you wish me to say on the other points.

2623. Perhaps that would be the better plan. What is the first point you wish to refer to?—The first point is this. I have found in several instances that very great difficulty is caused by this. You know the practice is that when an application is made for registration of a trade mark, and that application is opposed, and when the bond has been lodged, then the applicant has to take out an originating summons to proceed with the registration of his trade mark. If the opponent is out of the jurisdiction, an originating summons cannot be served out of the jurisdiction; and that being so in several cases there would have been a difficulty but for the fact that the opponent has voluntarily accepted service of a notice of motion; and what I would suggest is this: that when a person out of the jurisdiction opposes an application for the registration of a trade mark he ought to be compelled to give an address for service in the United Kingdom, so that the proceedings may go on exactly in the same way as in the case of an opponent within the jurisdiction. I would also draw attention to this. When a person out of the jurisdiction gets on to the register of trade marks with a mark which ought not to be on the register, and then any person aggrieved can take action under section 90. But the same difficulty arises if the person who is on the register is out of the jurisdiction of the court: you cannot serve the usual notice of motion upon him. In cases I have had, the difficulty has been got over by the trade mark owner, the man on the register, voluntarily accepting service of notice of motion; but in one case

in particular it was not done without very great difficulty: he would not do it voluntarily except under very great pressure; and I really was in a difficulty to know what course I should have to advise under those circumstances. Therefore, I would also suggest that when a foreigner avails himself of the English trade mark register, and gets on the register, he too ought to give an address for service in this country, at all events for a certain time after he is placed upon the register—it might be one year, or two years, or it might be five years—so that if any one aggrieved wishes to take proceedings to get his mark off the register there would be no difficulty in so doing.

2624. (*Lord Macnaghten.*) It was suggested, I think, by one witness that anybody who availed himself of the Trade Marks Act ought to leave in the office an address for service. Would you go as far as that?—It is the first time I ever heard it suggested, but I should think that that would be extremely convenient. I have never found practically any difficulty in my own cases where the trade mark was registered by a person who at the time of the registration was within the jurisdiction.

2625. The difficulty seems to have occurred in this way: that when a new mark was opposed it was supposed to conflict with a mark on the register, and it was sometimes very difficult to find the owner of the mark that had been registered?—I should quite agree with that suggestion.

2626. (*Chairman.*) What is the next point?—The next point is this: I suppose the experience of the Committee is the same as my limited experience. The trade mark owners, as a general rule, do not think they get quite enough benefit out of the registration. The idea of course was that an owner would go into court as plaintiff, and would produce the certificate of registration; and thereupon the whole of the burden of proof would be on the defendant. But in practice it is nothing of the kind. Even when a man has been five years on the register the only effect is this: that the status of being five years on the register is conclusive proof of his title for the plaintiff in an action for infringement. He is not required to produce any further evidence in the action than his certificate when he has been five years on the register, but of course he is immediately met with a motion to rectify. The result is that exactly the same points can be raised against him after he has been five years on the register as before; the only difference being that there are two proceedings instead of one, and, to a certain extent, two sets of costs instead of one. That is a matter with which I do not propose to deal at all. It has, however, occurred to me several times that it would be giving a considerable and substantial benefit to trade mark owners if trade marks were put on the same footing, or somewhat the same footing, as patents are put by section 31 of the Act. That, as you know, is, that where the validity of a patent comes in question in an action, and it is decided in favour of the patentee, a certificate of validity is given; and then if afterwards the patentee brings an action upon his patent, having got his certificate of validity, and succeeds, he then, instead of the ordinary party and party costs, gets solicitor and client costs; and I would venture to suggest for the consideration of the Committee that it would be desirable to assimilate trade marks to patents in this respect—namely, that where a Plaintiff has successfully established his trade mark in a court of law, when impugned or challenged, he should get a certificate, and that in subsequent actions for infringement he should have solicitor and client costs. Then I have one other suggestion of an analogous character to make, and that is this. With regard to the present appeal to the Board of Trade under section 62, subsection 4, so far as my own personal opinion goes, I am not in favour of the absolute abolition of the system of appealing to the Board of Trade, because it evidently provides an inexpensive form of appeal. But what I would suggest, and I suggest it by analogy to what takes place in the chambers of the Chancery judges, is this. In the chambers of the Chancery judges, as some, if not all, of the Committee are aware, the parties go in the first instance before the chief clerk, and they are represented by solicitors; and the expense of going before the chief clerk is comparatively small; but if either party wishes it, they are entitled, as a matter of course, and as a matter of right, to have the proceeding adjourned to the judge. Therefore, where either party thinks that it is a matter of sufficient importance, or complication, or a matter in which his interests are so great that he would like the opinion of the judge, he has a right to go to the judge. Therefore, what I would suggest would be this: that sub-section 4 should be so altered as to give the applicant for registration the right to go to the court if he likes.

2627. (*Earl of Crawford.*) To go to the law officer would not it be?—No, to go the court. I do not know how far I am at liberty to allude to any information that I may have had as to suggestions that have been made to the Committee, but I believe it has been suggested that the appeal should be to the law officer and not to the court. I must say that the longer I practise at the bar the more convinced I am of the extreme desirability of having everything in the nature of a legal tribunal, open to the public, and that would be the reason why I should think it would be much more desirable that the appeal should be to the court and not to the law officer. Therefore, my suggestion would be to let the present appeal to the Board of Trade stand exactly as it is with the right to the applicant, if he chooses, to have the matter referred to the court. Then, if it were a very simple and small matter, he would be contented to accept the decision of the Board of Trade.

2628. (*Chairman.*) What has been suggested to us is that if the Board of Trade are satisfied that the Comptroller's view is erroneous they should act upon that opinion, but that if they agree with the Comptroller before hearing the application they should at once refer the matter to the court; that the Board of Trade should, on the application of the applicant, review the Comptroller, but that if their impression on looking into the case was the same as that of the Comptroller they should at once refer the matter to the court. Do you think that would work?—I think so.

2629. In that case the application if refused could never be refused absolutely except by the court?—Yes. That would of course remove a great many of the objections that I feel to the present system. I think it is very desirable that there should be a cheap appeal, if I may use the expression, in the first instance, because there may be so many minor matters on which the applicant may consider that the Comptroller is not quite right, and yet he may not wish to go to the expense of an application to the court. I do not know whether the Committee has considered, or will consider, or can consider the rule of the courts, that where the applicant goes to the court, whether he succeeds or whether he fails, he has to pay the costs. It seems to me rather anomalous that if an applicant is refused registration by the Comptroller, and he then goes to the court, and the court decides that the Comptroller was in the wrong and ought not to have refused him registration, nevertheless, he has to pay the Comptroller's costs.

2630. (*Lord Macnaghten.*) How is the Comptroller to be paid? Somebody must pay him?—Out of the fees of the Patent Office; the fees for registration.

2631. (*Chairman.*) What is the next point?—The next point is with regard to section 74; with regard to the system of entering disclaimers on the register. The Committee doubtless observe that in the case of new marks the system of disclaiming in the application, and of entering a copy of the disclaimer on the register, is confined to distinctive words or combinations of words. It does not cover, as it does in the case of an application for what we call an old trade mark,. a common device. Now among the things that are so

Mr. J. Cutler.

21 May 1887.

frequently registered are labels which are registered as an entirety. My view decidedly is that where an applicant registers a label, and in that label there are particulars, things which are common to the trade, of which he cannot claim the exclusive right, he ought in his application to disclaim those common particulars whether they consist of devices or of words.

2632. That is to say, you would extend that disclaiming provision to common devices as well as to common words?—Yes, I think it is extremely desirable, as in the case of a specification of a patent. A patentee in his claiming clauses is obliged to state what it is he does claim. After alluding, as he does, in the body of his specification very frequently to a great many things that are common to the trade and common to the world, then by his claiming clause he shows exactly what he does claim; so that afterwards he cannot harass anyone by claiming anything that is not included in his claiming clause. So in the same way when a man registers a label I am of opinion that he should in his application state what are the common particulars and disclaim them; and then he could not afterwards bring any action with any chance of success, except upon his label as a whole, or upon such portions of his label as he has not disclaimed as being common. Your Lordships probably are aware that it is very seldom, when an action is brought for infringement of a registered trade mark consisting of a label, that the infringer takes the whole thing. He generally takes certain portions of it, and the question always arises whether he has taken, not the essential portion (you cannot use the term "essential" having regard to the 64th section), but whether he has taken the material portion.

2633. Whether he has taken enough to make the one an imitation of the other?—Yes. It would save expense in the trial of these cases if, on looking at the plaintiff's registered label, you could see at once what it was that he claimed, whether he only claimed the whole combination or whether he claimed the whole plus certain portions. That would be at once apparent on looking to see what he disclaimed.

2634. Your next point is on section 92, I think?—That, I think, I hardly need trouble the Committee with. It is such a very small point.

2635. (*Lord Macnaghten.*) Can you tell us what section 73 was intended to mean, as you had something to do with drawing the Act?—That was not a clause that I drew or had any hand in. Clause 74 I had, but it was altered by the Government draughtsman afterwards. Very little has been said in the Courts about section 73. There has been nothing at all said about section 86. Has the Committee's attention been called to section 86? It is a very curious section: "The Comptroller may refuse to grant a "patent for an invention, or to register a design, or "trade mark, of which the use would in his opinion" —that seems to vest absolute discretion in him—"be "contrary to law or morality." I am not aware of any trade mark which has been refused as yet on the ground that the use of it would be contrary to morality.

2636. (*Chairman.*) It is conceivable that a man might have an obscene mark?—Quite so. If an objection of that sort were taken, I suppose it would be held that that being a matter entirely in the discretion of the Comptroller, there would be no appeal whatever from it, not even to the Board of Trade.

2637. But why? It is only one of the grounds upon which he may refuse it?—It does not come in the part relating exclusively to trade marks.

2638. No, because it applies to the whole patents and designs as well?—But I think it would be extremely desirable that those words "in his opinion" should be struck out.

2639. (*Lord Macnaghten.*) That section has not produced any inconvenience as I understand?—No; not as yet. I do not know how far I am right in saying so, but the present Comptroller has shown a very great indisposition to refuse marks; he has shown (if I may with propriety say so) great liberality in accepting marks. It seems to me that section is susceptible of abuse. Then, I think the only other remarks that I should care to make to the Committee would be on section 64. It is a very curious thing, but there has never been any decision yet as to the meaning of the word "brand" in sub-section *c*. My view always has been that "brand" is used in the strict sense there, and not in the popular sense, that it means something or other that is either branded on a cigar box or is stamped upon a bar of soap, and is in that respect something different from either a label or a ticket or a heading. But, of course, it is the expression "fancy word, or fancy words," that causes the great difficulty. I should like to state very shortly to the Committee what my view is. In the first place, I think that Lord Justice Lindley is erroneous in his idea of the reason why those words were inserted in this Act when they do not appear in the Act of 1875. He thought they were inserted to mean such a case as the rejection of AEILYTON—Stephens' mark, and therefore he deduced from that his notion that it was intended by the Legislature that a fancy word should be something unintelligible to the ordinary Englishman, or meaningless, when applied to the particular article. My experience shows me, if I may say so, that that is not the case. The mercantile community have shown the greatest possible desire, even before the first Trade Mark Registration Act, to have word trade marks. Some of the most important trade mark cases that we have in the reports anterior to the Trade Marks Registration Acts were upon words such as "Glenfield" and "Anatolia," and so on. When the Registration Act of 1875 was passed and they could not register words by themselves, it was the commonest thing possible for traders to register a word plus some device. They did not really care in practice a bit for the device; what they cared for was the word; and they thought that by registering the word plus the device, and putting their goods upon the market under this trade mark, they would get perfect protection, because their goods would get to be known under this particular word; and then, although they could not sue for registration of a trade mark simpliciter, they could sue for passing off the Defendant's goods as or for their goods by the use of the word. So that really this expression was put in, as I take it, to meet the general desire of the trading community to have word marks. And there is another minor reason, which is this—I daresay it has been mentioned to the Committee: Of course trade marks are most useful for advertising purposes, and there are a great number of newspapers and periodicals that will not take pictorial advertisements. Therefore a man who has a device trade mark either cannot put it into one of those periodicals—for instance, the "Times"—or he is driven to the necessity of describing in his own words what is his trade mark; that it consists of a device. Therefore, my view is that there should be a good deal of liberality shown to trade mark owners in allowing them to register word marks; and I think that it would be very desirable to get rid of the term "fancy" altogether. I think what ought to be aimed at is this: that a man should not be allowed to take a word—of course he cannot take a word which is in common use in his own trade—but that he should not be allowed to take any word which would interfere with the reasonable rights of the trading community at large. He must not be allowed, of course, to take any word which is deceptive. In dealing with this matter, you have to deal with the geographical question, the question of geographical words. That, I venture to think, must be met with in one of two ways; either by saying that a geographical word cannot be a trade mark at all, which is rather strong, or by putting it in the way in which I have ventured to put it, after turning over the matter in my own mind more than once. My notion is that "fancy word or words not in common use" should be taken out of sub-section *c*. I may just remark in passing that there never has been any decision yet as to what those words "in common use"

Mr. J. Cutler.

21 May 1887.

mean. In the decisions of the Court of Appeal up to the present time they have scrupulously avoided deciding that. Take some slang expression like "Crikey." That is a word that certainly is in common use. One finds it in Dickens, and in Thackeray, and so forth, besides hearing small boys say it in the streets. That would be a fancy word as applied to any article, but would it be a word not in common use? My idea is embodied in this. In the first place, take out "fancy word or words" from sub-section *c*, and make a separate sub-section *d*, and let it run thus: "A distinctive word or distinctive words not in "common use with reference to the goods for which "registration is applied, and not being necessarily "descriptive of such goods or their origin." You know the word "Electric" was rejected, and in the argument there were one or two things said. For instance, it was suggested that "Electric" was a bad trade mark because "Electric" was descriptive, it was descriptive of the beautiful sheeny quality of the velveteen. That was, of course, very far-fetched. Then one of the learned judges on the bench said that "Electric" might convey to his mind (he did not say that it did) that there were certain substances which had, or were reputed to have, the faculty of developing electricity; and that if he went and bought an under-waistcoat of "Electric Velveteen" he might be deceived, because he might suppose that he was getting a garment which would develop electricity when it would not. That shows the lengths to which the matter might be pressed. I think the words "necessarily descriptive" would sweep in descriptions of quality. For instance, take the words "nourishing stout," no one could for a moment deny that the word "nourishing" is descriptive of the stout. It is not descriptive of the origin of the stout; but it is descriptive of a characteristic, and I suppose the leading characteristic, of the stout. There is a very great difficulty in framing a definition. I tried very hard before the Act of 1883 was passed—I found great difficulty, but after very great consideration this really is the best I can suggest. That, you see, does not deal with the geographical question. The geographical question I should propose to deal with by a proviso, and on this footing. I do not think that a man ought to be allowed as a new trade mark to appropriate the name of any city, town, village, or district, certainly in the United Kingdom, and perhaps it ought for symmetry to be extended to the whole of Her Majesty's Dominions. But then when you get outside, with regard to the name of any place outside Her Majesty's Dominions, I cannot see any reason why that should not be taken as a trade mark, unless it is the name of the place where the goods are produced. The following is the proviso: "Provided "that there shall not be registered as an essential "particular within the meaning of the section either "the name of any town, village, or district within "the dominions of the British Crown, nor the name "of any town, village, or district out of the dominions "of the British Crown where goods similar to the "goods in reference to which registration is applied "for are manufactured or produced."

2640. (*Chairman.*) Where similar goods are produced?—Where similar goods are produced. For instance, I cannot see any harm in a man taking the word "Timbuctoo" as a trade mark for knives; but I can understand there being a very great objection to his taking the word "Liege" for knives, because there is a considerable cutlery trade at Liege. A large quantity of knives is produced there; and, so far as I know, there are no knives produced or likely to be produced at "Timbuctoo."

2641. (*Lord Macnaghten.*) Is not that bordering on the deceptive, if you give a place of origin which is not, and cannot be, the place of origin?—Of course, it is open to that observation.

2642. Suppose you took the name of a town in France and connected it with velvet, would not that possibly be deceptive?—You could not take Lyons.

(*Chairman.*) Take Calais.

2643. (*Lord Macnaghten.*) Would not that border on the deceptive?—Of course it would.

2644. (*Mr. Hutton.*) Take Rouen; they do style some goods Rouennerie?—Yes.

2645. (*Chairman.*) You would limit your exclusion to town, village, or district, but I understand you would allow a mountain?—I think so.

2646. Or a river?—Or a river, or a lake.

2647. (*Lord Macnaghten.*) We all in Ireland think it is a very great hardship to take the name of "Balbriggan." As soon as we make anything in Ireland it is at once imitated in England?—But then Balbriggan is a district, is not it?

2648. Take the name of a town famous for whiskey, for instance; I do not quite see why the name of that town should not be connected with a trade mark if the man himself put his name, or something which made it distinctive?—We are now upon this; using it as an essential particular.

2649. (*Chairman.*) Using it as the distinctive feature. If he has a distinctive feature he may add the town as a common word?—Yes; for instance, take Abbotsford stoves, that is the sort of thing.

2650. There seems to be rather an objection to allowing a person to take as his trade mark the name of somebody else's property?—Yes; but is not Abbotsford a village? I do not know.

2651. I think it is the name of Sir Walter Scott's house?—The owner might not take it as a delicate compliment. Certainly it had not occurred to me, but a man might object to having the name of his estate, supposing it was not the name of a town, village, or district, adopted as a trade mark, that he might not take it as a compliment.

2652. Do you see any objection to allowing a man to register the name of his place, if it were really his own property or estate?—No, I do not see why he should not.

2653. (*Lord Macnaghten.*) Take Sir Titus Salt's place, Saltaire, putting it as an example, would you allow him to register it as a trade mark?—Now, I believe, Saltaire has become a district. Of course once on the register, I do not suppose a man could be taken off by reason of subsequent events over which he has no control. Supposing the Government were to allow me to buy a slice of Salisbury Plain, and I were to erect a manufactory of some kind there, and give this manufactory a name, then I think I ought to be allowed to register the name of my manufactory as my trade mark; but if I, having erected my manufactory, allow a village to grow up around it, so that the name I have given to the manufactory no longer denotes the manufactory and the manufactory alone, but the village of which the manufactory is the centre, then I should say I ought not to be allowed to register the name. I see an objection to a man being allowed to register as a trade mark the name of any place, so as to prevent anyone else from coming and setting up in the same line of business, in legitimate competition, of course, in that place, and making use of that name for all purposes connected with his trade. That is the difficulty I feel. I do not see how you are to draw the line. You cannot say a man cannot register as a trade mark the name of a place which has over 10,000 inhabitants or over 500,000 inhabitants.

The witness withdrew.

Adjourned to Saturday, June 11th, at 11 o'clock.

Board of Trade, Whitehall.

Saturday, June 11th, 1887.

PRESENT :

LORD HERSCHELL. JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. W. T Windsor.

1 June 1887.

Mr. W. T. WINDSOR called in and examined.

2654. (*Chairman.*) Are you engaged in business in Manchester?—I am.

2655. What is the nature of your business?—I am what is called in Manchester a grey cloth agent; and I have been in business for 24 years.

2656. You are not a manufacturer?—I was for many years a manufacturer, but, although I own the mill that I formerly worked, I am not now working it; I let it.

2657. Are you acquainted with the practice of the Manchester trade with reference to the use of headings?—Yes. Perhaps I ought to say I represent about 20 manufacturers, and sell the production of their mills. I supply these goods to almost every buying house in Manchester.

2658. Headings are extensively used by manufacturers and by merchants?—Certainly. Practically, all grey cotton cloth is sold with a heading to each piece.

2659. Do you agree that, in some market at all events, the heading is of considerable importance and value?—I should say that in most markets grey cotton cloth could not be sold without a heading.

2660. Not merely that it should have some heading; but particular headings used by particular manufacturers have acquired in certain markets a special value?—Yes, that is so undoubtedly.

2661. Do you think it would be desirable, if it were practicable, to give legal protection to headings of a special character?—Yes, if it were practicable, and if, in the present state of things it would not produce continual litigation, I should say so, certainly.

2662. What is your view as to its practicability?—I do not consider that it is practicable at the present stage, whatever it might have been had such a system originated before headings were begun to be used. Now the number of headings in actual use is so enormous, that it is hardly possible to produce any heading which has not got a large number of other headings so nearly the same as itself, that I think it would be impossible to register any one heading without doing an injustice to the makers of other similar headings. In my own business I have used at least 10,000 headings. I have a book here with about 1,500 different headings. I have two other books in use with about 1,500 more, which is about 3,000; and, certainly, I have not kept more than one out of every four headings which I have used. The headings are made in lines. The width of them is limited, on account of the cost, to from 2 to 3½ inches. The number of colours capable of being used is very small. Variations made accidentally and unintentionally by the weavers are very great; so that, on all those grounds, but chiefly on the ground of the enormous number of headings actually in use, I believe that registration is impracticable. For instance, when the committee of experts met in Manchester, although I had so many headings in use myself, I did not send one heading in to the committee of experts, because I thought the thing was perfectly hopeless and useless, and a waste of time to attempt to register.

2663. It would be, of course, impossible to register headings unless you made the colour part of the registration?—I think so, distinctly; because if you register merely lines or widths of lines, and allow anyone to vary the colours, the whole effect would be gone.

2664. Even if you were to register colours, I understand you to consider that it would be impracticable, on account of the great variety which yet possess a near resemblance to one another?—I think so, decidedly.

2665. (*Mr. Hutton.*) And I suppose also the various shades of the colour?—Yes. You only have a limited number of colours which you can use; each of those can be varied, certainly, in shade very greatly; but I imagine that if any registration were in operation, and colours were defined, each defined colour would have to include all its various shades.

2666. (*Chairman.*) Why should it include all its various shades?—I do not think you could possibly define the shades of colour. Take, for instance, pink. There are a number of shades of pink; but if you were to allow a man to register one particular shade of pink, and yet to allow other persons, not the owners of that registered heading, to use other shades of pink, you would defeat the object of your registration; because at present, through weavers weaving by gaslight, the yarn being dyed by different dyes, and, at times, through different thicknesses of yarn being used, and the same dye producing a deeper shade on a thicker yarn, you have now headings intended to be the same, but which, in the same delivery of cloth, are going out abroad in different shades.

2667. I suppose, if you allowed registration of a heading it would only be of a distinctive heading; and, therefore, of one consisting, not of a single colour, but of such a combination, both in form and colour, and arrangement, as to be distinctive. Then it might be obvious that another heading, although there was a difference of shade in some of the colours, yet was an imitation, or a representation of the combination?—Yes. Perhaps, if I may produce my book, I may show what I mean (*producing a book*). *Those* are three makings of the same heading. The original instruction to the weaver has been to produce *this* heading. Another weaver weaving the same heading, the same arrangement of colours, has produced that result, and a third has produced *that* result. They all differ.

2668. I suppose nobody could question that any one of *those* being admitted, the other would be a representation of it, which could not be permitted?—If you were to register *that* heading, and say that *those* two were to pass under that registration, and you were to allow another manufacturer to put *these* two outside bars in blue instead of in black, that would probably be a colourable imitation. You would not merely include lines, but colours, or any colour, in

those lines. Supposing I were to put three thick cords at the end, and put them in blue, still the effect abroad would be that the three thick blue cords would be again an imitation. It would be different. It would have almost the effect of using the two black cords.

2669. Supposing in the centre, instead of *this* broad piece of green with the two red stripes down it, you had simply a broad piece of blue, you would get a totally different effect?—You would get a different effect; and that is what is constantly being done. For instrnce, you have a case *here*. Originally this heading has been made. I cannot state this as a fact, but it frequently does happen. A man comes to me and says:—"I have an order for *this* cloth for Portugal." I say:—"Well, I cannot make you that heading," on the ground that, as far as possible we do keep one customer in one market to one heading. Then he says:—"Make me the nearest you can"; and I produce *that*. I alter the purple simply to green. But so far as the original customer is concerned his object is defeated almost as much.

2670. Why does the second customer want one as nearly as possible like the first?—Undoubtedly he wants to make the buyer abroad understand that he is selling the same cloth as his competitor.

2671. Surely that is a great mischief if it can be in any way prevented?—We all in Manchester admit that it is a great mischief. We should be glad to have it prevented if possible; but we think with this enormous mass of headings it is impossible.

2672. (*Mr. Hutton.*) *This* heading with the purple is what you made for another shipper?—Yes, *that* is the original one.

2673. (*Chairman.*) As I understand, at present there would be nothing to prevent a manufacturer, although you were not willing to do it, making exactly the same heading?—That is constantly done. I have no doubt I am doing it myself constantly. A man comes to me, and gives me a heading, and I make it. It is possible the cloth of which I am making it is a few per cent. lower in value and cost than the original cloth which has originally gone out with that heading, and his object is achieved. He sends out a cloth which appears to be the same as the original one, but which is slightly lower in value.

2674. Is not that in its results mischievous to the trade?—We all agree that it is mischievous; but I think with this little space, and this limited number of colours, that you cannot prevent it—that the attempt to prevent it would produce a constant mass of litigation in which we should be afraid to stir.

2675. Would your objection extend to permitting the registration of any heading which could be shown to be of a different character and description from any previously in use, so as to leave untouched, without power of registration, existing headings, but from this time to permit the registration of headings which could be shown to be distinctive and characteristic either from the material used, or the character of colour, or in any other respect?—I think in practice it would be found absolutely impossible to define a distinctive work so as to prevent an imitation being used unless you were to set up a very wide and arbitrary law which would practically exclude other persons using anything approaching it. For instance, take *this* case. *That* is an instance of two shades of green. In gaslight I do not suppose the difference would be perceptible. Those have come up from the manufactory.

2676. Just look at this (*producing a green heading of Mr. Pickstone's*). This heading is of a peculiar character. It is not merely the colouring, but there is a sort of rough form about it. *Here* you have another heading, which has apparently copied that particular feature. It is a slightly paler shade of green, and the arrangement on either side is different, but the general feature is the same. Do you think *this* is a distinctive heading? (*referring to the original heading*). It is suggested that it is distinctive by reason of its being made with noil?—I do not think that it would be just, in the present stage of the trade, to give to one manufacturer an exclusive property in a heading made of that material, because the same material has been used by numbers of other people.

Mr. W. T. Windsor.

11 June 1887.

2677. I was not suggesting individual material, but coupling the material with the form and other features?—This is precisely the same material (*pointing to another heading of noil*). I have read Mr. Pickstone's evidence, the first portion of it, while waiting here. I think Mr. Pickstone is incorrect in stating that he or his firm use this exclusively, or that even they were the first persons to use it. My impression was that I was the first person to use that material. I certainly used it about 1874, and for some years I was not aware that any other person used it; but it is quite possible that I might have been the first or that Hopwood's might have been the first. I think when perhaps 20 firms are using that material, and perhaps 20 firms or more are making headings almost precisely similar to that, to give them an exclusive property in such an arrangement would be unfair to the others. I think in this book I could find almost the same heading as that. For instance, here you see a large range, all of the same material. If you were to register, we will say, that heading, No. 452, and a man had an exclusive property in that heading for a certain market, another person sends out this heading, the arrangement and colours and general effect is so similar that your object in registration would be defeated, and yet you could not exclude all broad headings with pink, blue, green, and yellow colours in that material.

2678. As far as I can see, whatever use there is in headings is entirely defeated by other persons imitating them?—Of course there are certain uses that still remain. There is the use to show that it is a complete piece. There is the ornamentation of the piece.

2679. (*Mr. Hutton.*) Are the goods sold by their headings or by the quality of the cloth in the markets?—There are certain markets in which cotton cloths are not saleable unless they have an ornamental heading upon them. Take, for instance, Constantinople. If I were to send a T cloth to Constantinople with a fancy heading such as No. 459, I could sell it for 1½*d.* to 3*d.* a piece more than if I were to put what is called a five red heading, which is five simple bars of red cotton about two picks each, such as that. On the other hand, in China, the same cloth would sell quite as well with the five bars of red as with the fancy heading.

2680. (*Chairman.*) I suppose you would agree that, if it were possible in any way to prevent imitations of a heading with a view of passing off inferior cloth as similar to the make of a manufacturer who makes a superior cloth, it would be desirable to put a stop to it?—Yes, I quite admit that. As Mr. Pickstone raised that question very strongly, I will deposit some of these. These are headings which have been made for about 14 years. Those are all made in the material to which Mr. Pickstone refers. This heading was made in 1877. This prior to 1877.

2681. Therefore it has been made for more than ten years?—Yes.

2682. Would you see any objection to making it penal for any person knowingly to manufacture or order the manufacture of a heading intended to imitate the heading used by a manufacturer?—I think it would be absolutely impossible to convict any person of making a colourable imitation of a heading, because I think he could get evidence in Manchester which would make any jury doubtful.

2683. Do you think that if he, for example, ordered the manufacture of a heading which was very like another heading, and was proved to have sent the goods to the market where that heading had a reputation, there would not be very strong evidence as to what his intention was?—If you were to produce any heading for or from any market, I think it would be

Mr. W. T. Windsor.

11 June 1887.

found that other headings are going to that market so similar to the original one as to get rid of the question of colourable imitation.

2684. Take the case you have put, where the man desires a heading made like or nearly like an existing heading by reference to it, surely in such a case as that there would be the clearest evidence of what his intention was?—Of course I should be very glad myself, as a manufacturer, if I could have registered originally *this* heading with *this* material, and have obtained an exclusive property in that heading and material and any imitation of it. I should have been glad, but I think it would have been an injustice to my competitors.

2685. What I am rather putting to you now is something apart from registration. Assume for the moment that we are correct in saying that it would be impracticable to register on account of the vast number and the necessary difficulty of differentiating one from the other. I am not putting it as a question of registration at all, but what I was suggesting was whether it might not be made penal to intentionally copy or make a colourable imitation of an existing heading for the purpose of putting it on the same market and so deceiving?—I do not, individually, like penal or criminal action in regard to trade. I do not know whether I could fairly answer such a question.

2686. Surely some effort ought to be made to stop criminalty in trade. You must admit that nothing can be more dishonest or more mischievous to trade than that a person should imitate a heading, which is used in connexion with cloth of a particular character by a manufacturer, with a view of underselling him by supplying cloth of an inferior manufacture, and it may be, ruining his trade?—I agree in the principle, of course, that one man who attempts to take another man's trade by imitating his marks on goods is doing an injustice, and if it were possible, without increasing the injustice elsewhere, to stop him it would be a good thing; but I think that legal action in this case is more likely to produce injustice, if it were strained at all, than the present state of affairs. I should like to give an instance. There was a trial took place in Manchester between the firm of Carver Brothers and Mr. Bowker, which lasted six or seven years. Messrs. Carver Brothers were exporters of goods to Portugal, and considered themselves the owners of certain headings with certain numbers on the goods. Mr. Bowker exported goods to Portugal with similar headings and similar numbers. Messrs. Carver Brothers brought an action against Mr. Bowker to restrain him and to obtain damages. The whole damage, which Messrs. Carver Brothers originally claimed, was, speaking from memory, not more than 1,000*l*. Mr. Carver told me himself that he had spent an enormous sum in this action. Mr. Bowker was utterly ruined and failed in consequence. I think if it were in the power of a great firm to bring actions for penalties against small firms, on the ground of imitation of headings, the great firms could crush out many of the small firms by the mere threat of proceedings, and you would do more injustice than exists now where there is a state of free competition.

2687. Would it be possible to give a cheaper and a more summary remedy, instead of an action for penalties, to enable it to be done by a proceeding before the county court judge or before the magistrate?—I cannot answer this question. I have not read Mr. Bailey's evidence, but he has spoken to me about it, and I agree in principle with his views on this question generally.

2688. I do not think he has been examined on the suggestion I am making?—I have spoken both to him and to Mr. Fulda, and of course, to Mr. Smithson, who is going to be examined; and personally I agree with them, that it is absolutely hopeless to attempt to register headings, that any merchant has at any rate the utmost possible protection to himself in being able to register designs and marks in stamps and in tickets, but that considering that there are probably in existence 50,000 or 60,000 different headings now, all within two to four inches in width, it would be impossible to register them.

2689. (*Mr. Hutton.*) And which may be considered distinctive headings?—Almost anyone of which some individual would claim to be a distinctive heading. I should not admit it. Mr. Pickstone claims this to be a distinctive heading, but, I think, it is not a distinctive heading. I know I have used a heading myself, so similar as to be undistinguishable from it.

2690. (*Chairman.*) Of course, apart from the mere comparison of the heading by itself, you may have other circumstances pointing to the intention to imitate. You may have the heading connected with the numbers that are put upon the cloth, and the mode in which the design is put upon it, and the market to which it is going, which may all point to the fact that it is intended to imitate. Those would be facts relevant to convince the tribunal that the one was intended to be an imitation of the other. What I am now putting, is not as to the question of registration, but to see whether something could not be done to put a stop to a practice which you yourself condemn?—I should be glad if it could be done.

2691. (*Mr. Hutton.*) How many of these varied distinctive headings have you in use?—I think about 2,500 headings numbered in books. In this book there are 1,604 which are marked, some of them are not actually in, but they are being used, and there are references where they can be found. I have two other books with about 1,500 more. We do not usually put the heading in a book at all, unless we have used it two or three times over.

2692. Do certain houses keep the same trade always to the same headings, or do they keep on changing?—I find that the different markets vary very much. The shippers, who ship goods to India, usually keep in shirtings to one class of heading which we have not here at all, they are in the other book, lines of gold and white cords, and simple colours. Other markets, such as Constantinople, Egypt, and Syria, and the Turkish Empire, generally use arrangements of fancy colours. Those headings vary from time to time. I have a case here. This heading, as originally made for Beyrout, was made in three simple bars, green, yellow, and red, and was called the three colour heading. After it had been used for a couple of years or so, some man, wishing to make his cloth that he was exporting, a little different to the other, put a bar of lilac on each side. After a while, another man puts two bars of lilac on each side; another man puts a little bar of lilac in the middle. His cloth went to Syria, and still goes to Beyrout; to Beyrout there go now half a dozen or a dozen variations of the original heading.

2693. Shipped by different houses?—Shipped by different houses.

2694. But made by the same maker?—Made by different makers.

2695. (*Chairman.*) Why do they send those variations of the heading, instead of substituting some entirely different heading that could not in the least be mistaken?—I believe the reason, there was this. The first cloth that went out after a time is debased, loses its cast, because other manufacturers send out lower qualities in the same heading. Then the man who finds his heading, the three colour heading, is becoming debased, makes a variation, and sends out another cloth in a slightly different heading, which in its turn becomes debased, the character of the heading by degrees, becoming lowered.

2696. I suppose, in the first instance, before the lower character of the cloth is discovered, the manufacturer who sends the inferior article gets the price of the superior article?—He gets a better price than he otherwise would, no doubt.

2697. That strikes one as very serious; it appears to go on systematically?—In some markets, that

system of a particular heading being degraded does go on. It goes on in a market such as Beyrout, where the trade is in the hands of an inferior class of trader; and it is less to be seen in the case of India and China, where the trade is chiefly in the hands of large houses, who think their character requires that they shall keep up the character of any heading they use, on the one hand, and whose trade is too large to make it worth their while on the other hand.

2698. We were told that in the Levant, I think, or in some markets, the heading is more important than the ticket or the trade mark; can you say how that is?—That applies very fully to having a fancy ornamental heading. In the Levant generally, goods which are sold grey are unsaleable in what we call plain headings—narrow five-red—or two or three white cords.

2699. What I meant was, we were told that the distinctive heading was more looked to when the quality of the cloth was being considered, and that orders were more given by the heading than by any trade mark?—I think that is true to some extent, but to a much less extent now than it was 10 or 15 years ago. The native dealers and the individual buyers are alive now to the fact that the heading does not mark the quality; whereas, there was a period, 10 or 15 years ago, when it was probably quite true that the buyer then looked more to the heading than to the stamps. I think, to-day, they look more to the quality of the cloth and to the shipper's stamp than they do to the heading, although they require the style of heading which suits their market.

2700. (*Mr. Hutton.*) Do they give a name to the heading in the Levant?—The one heading to which I referred has always been called the three colours. There is another heading here which is called the Spanish flag, which goes to South America, to Buenos Ayres, and Monte Video with any number of variations of width and colour. I think, originally, it would be possible to have registered so very plain a heading as that; but it would have given to the man who got the registration a property in those colours which possibly is scarcely fair.

2701. You might register the French flag—the red, white, and blue?—Yes.

2702. (*Chairman.*) Those cases in which the inferior cloth is sent, or other cloth is sent to a market with the same heading, or one very nearly the same as that which has been adopted by a manufacturer already, are, I suppose, generally cases where that is intentionally done. The case of accidental resemblance would be comparatively rare?—I should say it is intentionally done. There must be a certain amount of variation from the fact that the headings are made by manual labour by different weavers.

2703. (*Mr. Hutton.*) There are two different headings, and yet there is great similarity?—Those headings are made for Constantinople with a peculiar arrangement of cords. I think it would be very unfair to register any one of this class of heading. I have 40 or 50 headings somewhat similar.

2704. How would you define such headings as that in registration?—It is impossible to define any one of that class of headings.

2705. That is clearly an imitation of that one in the effect?—The effect is very much the same.

2706. (*Chairman.*) As far as I can see, the great use of headings is to facilitate fraud?—There is a different result from that. In the shirtings that go to India, the larger proportion go in gold headings. Those headings are almost exactly the same. There the merchant's stamp alone is a distinctive mark; the heading simply shows that the piece is complete, and it is this slight ornament on the piece. So far as India and China are concerned, the number of goods which in any sense could be sold with a heading as a distinctive mark, is extremely small. So far as the Turkish Empire is concerned, I think few, if any, goods are sold by reason of the heading as a distinctive mark, but all are sold with fancy headings. The firms for whom most of these are made vary their headings every year. The only object they have is to enable them to get a better profit on their goods than they would otherwise do, if the buyer knew that they were precisely the same that he brought previously. Take this particular heading, this man may buy from me a cloth at 7½*d.* a pound, with that heading. The market goes down a little, and he buys again at 7¼*d.*, and he puts this heading upon it. He sends those goods out abroad; if the buyer abroad knew *this* cloth was the same as *that*, he would want the reduction which he knows has taken place in the market; but having a fresh heading the merchant is able to sell him these goods on their merits purely, without the retailer knowing that it is the same quality that he bought before.

2707. Why has the other become reduced in the market?—In that case, merely from a fall in the value in the market. The shipper does not wish that his customer abroad shall know that this is the same quality that he had before, and that he must make the same reduction.

2708. Do you mean he thinks that because there is a different heading it is a different quality of cloth?—Yes; he is not able to trace the one cloth from the other. He buys it on its own merits. The heading being different he cannot identify it. Then again, many of these goods go to little towns in Turkey, and in Persia. There may be two retailers in one of these places; if each of them had the same cloth and the same heading, they would put it at the bazaar door, and they would sell and cut against each other; whereas the merchant in Constantinople, having the same cloth in two different headings, would take care not to send to the same little town the same heading, he would send different headings; and so the retailers there will not be able to cut against each other, they will not be able to say across the street, "This is the same thing "as the other, but this is cheaper."

2709. (*Mr. Hutton.*) It rather tends to show that it is not on the heading but on the quality of the cloth that the cloth is sold?—I consider that now, all the world over, grey cotton cloths are sold more upon their own merits, as regards their intrinsic value, than upon headings.

2710. (*Chairman.*) Surely it is upon the headings, because, as you put it just now, the second year cloth is exactly the same as the cloth of the year before, only because it has a different heading it sells for a higher price?—That is a particular case.

2711. That is the illustration you were just giving; you said the manufacturer alters it the next year, because then it would not be obviously the same cloth as the previous year, and so he may get a higher price?—It would be sold on its merits as a cloth.

2712. It is precisely the same cloth as if it had the other heading, and yet it sells for more because it has a different one?—Yes, it sells for more.

2713. So that the heading after all is an element in the price?—Only to the same extent which the pattern of a piece of print is an element. It is an element, certainly. If you were sending to a market print calicoes, if you sent always the same patterns, they would get tired of them. That is the case in Constantinople. The cloth coming in a new heading is introduced as a novelty to that extent. The great difficulty that I see is the excessive quantity and variety of headings. I think it is within the mark to say that there are in use in Manchester probably 50,000 to 60,000 different headings, all variations within so small a compass, made by lines and colours.

2714. (*Mr. Hutton.*) The evidence we have had given us is in favour of registering by the effect produced, and not by lines?—In that case, I should like to say, it appears to me to be the impossibility to register by effect this class of heading. You have a heading there, 528, another 603, another 700. The effect to a man who is not an expert is very much the same. I think, if you registered by effect, you would have to include all those in one registry.

Mr. W. T. Windsor.

11 June 1887.

2715. (*Chairman.*) Or rather, when one was registered, to exclude all the others to anybody else?—Certainly. I have certainly 40 or 50 variations of the same heading, which are now in use by different merchants, each of whom would be injured if he were to be debarred from using them in the future. The firm who buy this heading are competitors in Constantinople with the firm who buy that heading, and it would be very unfair to exclude them for the future from the use of such headings.

2716. It would be, of course, impossible to allow the registration now of any heading which was not distinctive from every other which had been heretofore in use. You think it would be impractible to register headings under those conditions?—I think so. I think it would be absolutely impracticable. I think, within the limits of the space now used, it would be impossible to find any heading which could be defined as a distinctive one, because I think it would be found, if all these headings were classified together carefully, that there were a number nearly approaching it in size, arrangement of lines, colours, and especially in effect. I think the registration by effect would be the most impracticable proposition of all.

The witness withdrew.

Mr J. Smithson.

MR. JAMES SMITHSON called and examined.

2717. (*Chairman.*) Do you carry on business in Manchester?—I do.

2718. What is the nature of your business?—We are spinners, manufacturers, and agents. We have of our own about 750 looms, which is small, but we represent altogether between 4,000 and 5,000 looms in Manchester. We sell the productions of those looms.

2719. You are acquainted with the use of headings in the manufacture of Manchester goods?—Yes.

2720. And the character of the headings that are used in different markets?—Yes, more or less.

2721. Do you agree with the view that has been put before us that the headings are a matter of importance?—Yes, I do, most emphatically.

2722. Do you think also that there is a good deal of intentional imitation of headings in use for the purpose of representing that the goods are the same goods as those of a manufacturer who has previously used the heading?—Unquestionably that is done. I could give you an instance of our own, if you wish to see the heading.

2723. Before we go to that, I will ask you whether you think that it would be practicable to register headings, assuming that you make colour part of the registration?—No, I think not. I think it would be impracticable.

2724. Will you explain why?—Because the shades of colour would come so near alike on different cloths, and in other cases there would be so much variety where the same material was used, that I think it would be impossible for experts to determine what was the shade of colour to define the shade of colour.

2725. Do you think it would be possible to register a heading, and to prevent the use of any other heading, or the registration of any other heading, which so nearly resembled it as to be calculated to deceive?—I think it would be possible for another man to make a colour which would leave the heading for all purposes of trade the same, and yet the colours would be sufficiently distinct as to, in reality, form a different design.

2726. You mean so that there would be such an apparent difference that the one would not appear to be the same as the other, and yet, for trade purposes, it might be calculated to deceive?—Yes, I do think so.

2727. There are a very large number of headings, we are told, in use in Manchester?—That is so.

2728. (*Mr. Hutton.*) How many have you in your business?—About 6,200 I have here with me in our books.

2729. Distinctive headings?—Distinctive headings; in one sense distinctive, and in another sense not so. We could imitate them ourselves, and there are shades of difference between them; but, if they came to be defined, it would be impossible to say in what respect one heading differed from another.

2730. (*Chairman.*) Apart from the registration of headings, what should you say to a proposition to make it penal intentionally to imitate a heading with a view of representing that the goods were those of another manufacturer?—My opinion would be this, that while it would be a very good thing to prevent one manufacturer imitating anothers heading, yet the shades of difference are so slight that it would be constantly exposing honest men to actions for no intentional crime. If you attempted to make it penal, any scheme which you could devise would expose you constantly to risk. You would never know where you were in making headings. For instance, when we send patterns abroad, we are asked to put new headings upon them. I may give a case. There will be a range of qualities; there is the lightest, and it gets heavier and heavier. There will be seven numbers, each of those has to have a distinctive heading. Perhaps we may wish to make a dozen sets of those patterns at once, or even more than that, that would be 84 headings to be made at once. I have, myself, sat down with my brother to make as many even as 200 headings. I do not mean to say that I could do them right off, but they have to be done in a day or two. I think your Lordship will see that that would be a very difficult matter for me to do, if I had the risk hanging over my head in case I came near another man's mark of having a criminal action brought against me.

2731. It would not be enough to show (in the suggestion I made) merely that it was a resemblance. There would have to be some facts in addition tending to prove that that resemblance was intentional and for the purpose of misrepresenting by leading to the belief that the goods were the goods of another manufacturer?—Yes. It has never been put before me in that light, and perhaps your Lordship would allow me to consider that and reply in writing.

2732. I should like to put this to you. There are, we have been told, cases where express instructions are given, to imitate a known heading which has obtained a reputation in a particular market. Surely it would be expedient to put a stop to that by making it penal?—Yes, it would be a great advantage, unquestionably.

2733. I should quite agree with you, that it would have to be so guarded as to secure that no penalty fell upon a person who innocently produced an accidental resemblance. There are cases, are there not, where orders are given to make the heading precisely similar to a known heading, or sometimes to make it as near to it as possible, without its being exactly the same?—Oh, yes, that is done.

2734. Where those orders are given, there could be no doubt about the intention of the person who gave them?—I think that would be difficult to prove, and for this reason, that the number of headings is so enormous, and if you leave out the question of colour for a moment and take design, most of our headings are made within a limit of about two inches, some wider, and the number of variations that can be got is very small. Unless you have a clearly defined registered heading to start with, I do not exactly see how you would be able to take criminal proceedings against anybody else for imitating it. Would it not be necessary, in the first instance, that

your heading should be clearly defined, and that you should know what that heading was before you could take proceedings against another person for imitating it. Unless that were registered, would not the other man say, have I not as much right to use that as another man. I admit that it is dishonest. I am not arguing the moral point of the question. Would he not say: "How am I to know that such a heading exists."

2735. That would be an argument which he might use to prove that he had done it innocently. But there might be circumstances which, in spite of that, might convince any reasonable person that he had not? —Yes.

2736. (*Mr. Hutton.*) If a heading is brought to you to make the cloth by, and you put that heading on, what would your position be if you put it on and you are liable to criminal proceedings. Have you the means of ascertaining whether it is anybody's heading? You might in some instances; in other instances you might not know at all. For instance, I know home trade houses in Manchester, who send goods about to different parts of England, to Scotland, and to Ireland, and they send various cloths with a heading of their own, a heading which they have originated, and they come, perhaps, to us, and they ask us to put that heading on the cloth. Well, we do not know whether that is put on anybody else's cloth or not; we cannot tell. And in the same way they may have got a cloth made with that heading on from us, and they go to somebody else, and they give it to them.

2737. (*Chairman.*) Still, it might be possible to prove that they were aware that a cloth with that heading was sold largely by another manufacturer in a particular market, and that they for the first time were sending goods with that heading to that market, and were obviously intending to lead to the belief that they were the goods of the manufacturer whose goods had acquired a reputation. They might be perfectly innocent, and therefore liable to no proceedings, but it might be possible to show that they were not innocent?—I think the thing would be rather involved, but I would prefer giving an opinion upon it after a little more consideration. I wish your Lordship clearly to understand that I fully sympathise with the motive. I do not wish to be defending anything in the way of dishonesty in trade.

2738. I suppose you would agree that if in any way it is possible to check the open and notorious action by certain persons in the way of imitating headings with a view to getting a higher price for inferior goods because they are believed to be superior goods, it would be extremely desirable to do so?—Unquestionably; it is the interest of every honest trader.

2739. And I suppose you would agree that it is damaging to the trade of Manchester that such practices should be pursued?—Yes, unquestionably it is. My only hesitation for the moment was thinking of the number of cases in which headings are used where now they have no distinctive value. There are many headings which have no distinctive value. I could show you one in particular which has been put on. I am sure we have put it on hundreds of thousands of pieces of cloth, and all varieties of cloth, cases where it would be utterly impossible that one cloth could be mistaken for the other.

2740. (*Mr Hutton.*) For the same market?—No, some for the same and some for different markets.

2741. I suppose it is impossible to tell how many distinctive headings there are in use throughout the cotton trade of Lancashire?—I do not know how that could be ascertained. Of course there were 11,000 sent in in 1876. How far those represented all in use at the time, I could not possibly say.

2742. Did your firm send in headings for registration?—Yes, we sent some in; we sent a large quantity in. I tried to get to know the number yesterday, but I have no record of it; not that we thought it would be possible to register them, but it was a matter of protection in case it was, in order that nobody should step in before us and register headings which were ours.

2743. Yours were classed with the others on the B. list, I suppose?—Yes, they are on that long list of about 44 volumes.

2744. It is solely the impracticability of registering headings that weighs with you?—That is the evidence which I wish to give. My evidence is stronger upon that point than any other. Just speaking off hand, I think that if stamps could be introduced they might serve the purpose which your Lordship desires.

2745. Stamped headings?—A stamp on the cloth. Then the heading would cease to be the distinctive mark of the piece, and the stamp would become it. The heading then would simply be a piece of ornamentation, or evidence that nothing had been cut off the original piece.

2746. You have some illustrations?—Yes; I have a number of illustrations I have put down here. This is a memorandum I have prepared:—"I would "state a decided approval of the object aimed at "by those who want to register line headings as "trade marks, and signify that our sole objection was "its impracticability." Then I would confirm, if the committee desire it, the facts given in Mr. Bailey's letter, and his general reasoning. Would you wish me to go over those points in detail?

2747. (*Chairman.*) What facts were those? With regard to the impracticability of registering headings? —Yes. I could give illustrations as I went along if you desired it.

2748. Mr. Bailey writes:—"Trade Marks and "Designs Enquiry Committee, Line Headings, Ralli "Brothers, Peter Street, Manchester, 6th May 1887. "Dear Sir, I am in receipt of your letter of the 3rd "inst., written by direction of Lord Herschell, and "according to the request therein contained I would "offer the following observations upon the evidence "given before the committee on the 30th April last "by Mr. Isaac Hoyle, M.P., upon the registration of "line headings. It would be as desirable that manu- "facturers and merchants should be able to register "distinctive line headings as it is to register, under a "well administered system, representations of dis- "tinctive objects as trade marks." That, as you understand, I confirm. "But, speaking from my "personal knowledge of the infinite variety of head- "ings made in Lancashire, it will, in my judgment, "be found impracticable to overturn the decision "arrived at by the committee of Manchester experts "when dealing with the headings in use prior to the "passing of the Act of 1875, viz., that the 11,000 "headings which the trade had then sent in could not "be recommended for registration as trade marks. In "the deposits of the 11,000 headings just referred to "were included very few headings out of the many "hundreds of headings which my firm used, because "we regarded it as impossible to draw any line "between one heading and another when the whole "series would come before the experts and the Com- "missioners of Patents. The few headings which my "firm did send in were associated with quality, num- "bers, and other marks which we supposed might be "accepted for registration as 'combination marks.' "But in addition to line headings my firm sent in "several hundred designs of flushed borders woven "into the selvages of grey and bleached goods, which "we hoped would be passed for registration, because "they consisted not of lines and stripes but of actual "designs in coloured yarns of flowers, animals, birds, "and the like; but all these were thrown out by the "Commissioners of Patents as incapable of registra- "tion." I have had nothing to do with flushed borders in any way; still, it occurs to me at once that if a flushed border were found to be difficult to register which might have a positive design in it other than lines, it would be very difficult indeed to register the line headings. The flushed borders are much more different in character from each other than

Mr. J. Smithson.

11 June 1887.

these. It would be possible to introduce far greater variety.

2749. (*Mr. Hutton.*) That refers, does it not, to piece goods with stripes in?—Piece goods with a striped border as a distinguishing mark, woven in with a jacquard or dobby loom, I believe, in some instances.

2750. Those are now registered under the Designs Act?—Yes, and that is for a limited period. My only point was to say that if the one was difficult to register, the line headings would be very much more difficult. "Illustrations of this class of flushed borders "were sent at my request from the Copyright of "Designs Office, and they were referred to at the "close of my examination before the committee on "Saturday the 26th March last. If, then, original "specific designs, such as occurred in these flushed "borders, were rejected as trade marks, it must needs "follow that an arrangement of simple coloured lines "is much less adapted for registration, and in my "opinion the idea is chimerical. The universal "decision of practical men would be against the pos-"sibility of registering line headings, *see* the Man-"chester Chamber of Commerce Report for 1886, "pages 41 and 45." Well, I have always understood that in the market to be the opinion of practical men. "When there is design in a heading produced other "than by straight lines, as in woven jacquard or "flushed headings, or as in floral, conventional, and "other designs impressed upon the piece as stamped "headings, or printed as labels on paper, it is capable "of registration when it is distinctive. Mr. Hoyle's "reply to question 1548, that no heading is entitled "to protection unless it is distinctive, is perfectly "sound. But the difficulty will be found to lie in "determining what is really distinctive. If the "headings in use at the present time were arranged "in linear series, and submitted to Lord Herschell's "Committee, all hope would be abandoned of obtain-"ing anything sufficiently distinctive to warrant "registration." I saw those headings yesterday for the first time; and, certainly following them out from one to the other, it occurred to me that it would be almost impossible to define those headings, even where they were sufficiently distinct to make it perfectly justifiable for any firm to use them. Anybody might use one of those headings without in any way infringing anybody else's rights, and yet for the purpose of definition they might be the same. "I am afraid, however, "that I do not fully understand Mr. Hoyle's idea of "a 'distinctive' heading, inasmuch as from the answer "to Question 1533, he speaks of the 2,412 headings "belonging to his firm as being distinctive to his firm "'*and to everybody else* who deals in the article.'" I have not seen Mr. Hoyle's headings, but I should be very much surprised if he has 2,412, and they are all distinct from other marks used by the trade. "Very "many more than 11,000 headings could have been "deposited in 1875 if there had been any expectation "amongst merchants and manufacturers that headings could be registered; large numbers of users of extensive varieties of headings considered it useless to make any deposit of same. The subsequent number of headings has greatly increased, and they are constantly being modified. Mr. Hoyle's own firm (answer to Question 1498) have 2,412 headings on their own register; I am told that the firm of Messrs. Smithson Brothers have 6,000 line headings filed in their books as made by them at one time or another, and I believe that if the total number of line headings in use in the cotton districts could be ascertained, the mere citation of the number would be sufficient to convince the committee how impossible it would be for competent experts to find sufficient distinction for registration purposes from any arrangement of mere stripes and lines, whatever might be the combination of colours, or of materials used; and if Manchester experts are unable to separate them, it is certain that the Trades Marks Office would fail in the same task." . . . . . "From the answer to Question 1534, Mr. Hoyle "does not seem to be aware of the universal "Manchester practice that the same heading is used "on the most diverse qualities of cloths. Merchants "and manufacturers apply the same heading to the "most widely separated qualities." That is the case, but what I wish to endeavour to prove is not so much that protection is not required, as that it is impossible to obtain it in this way. As I said before, I take the position at once that there is imitation, and there is dishonesty; so that it does not much matter what else is done outside that. It is the dishonesty which you wish to curtail—"for instance, in grey shirtings, the "common 'red ends,' and the equally common 'golden "ends,' exported in such immense quantities to the "East, are used upon open, flimsy, light cloths and "upon stout heavy cloths made in much higher "reeds, 'green end mulls, is a term in universal use "for the lower' as for the higher reeded grey mulls; "the 'lilac jacconett' heading is put upon 8 × 6 "and 16 × 16 (ends to the quarter inch grey "jacconetts), and in T cloths the headings known as "'five reds,' 'two pinks,' and 'two lilacs' are used "by every merchant and manufacturer, irrespective of "quality." The two pinks is the heading of which I spoke, which was put on so many qualities. I can show you that heading later. "As regards the "answer to Question 1509, it is not within my "experience that the use of any heading implies a "definite width, length, or weight, and it is the first "time I ever heard of such a circumstance." I do not know whether I quite understand Mr. Bailey there. Certainly a heading, in some instances, is meant to indicate the same cloth which has been sent before, which, of course, includes width, length, weight, and all the other distinctive characteristics of the cloth. "Except-"ing for an extremely limited number of goods, either "exported or made for the home trade, my experience "of the Manchester market suggests that manu-"facturers are never known by their headings "as is suggested by question 1536." They are not generally known. I could not say there are no isolated cases in which they might be known. "In "answer to question 1537, a principle is advanced "which, in my belief, is at once incapable of applica-"tion, and entirely novel to the practice of the trade, "viz., that the registration of a line heading should "be granted on the ground of the superiority of the "quality of the cloth to which the heading is applied." I have not seen the questions put to Mr. Hoyle, and I do not quite understand what he meant there.

2751. The question was—"How can you begin "registration? A man offers to register a one-line "heading or a two-line heading." The answer was, "If the principle were settled, the mode of application "would not be difficult, and I think the principle "should be that where a man produces something "better than has been produced before, and puts on a "distinctive heading, that should entitle him to "registration, and that the registrar should say "whether it is distinctive or not"?—My opinion about that would be this, that if a man is entitled to register the heading of a cloth, then he should be entitled to do it, whether it is the best cloth of the kind or not, because opinion might widely differ, two men might make two cloths very nearly alike, and each might claim the superiority, and I do not think that the experts of the Board of Trade—the Trade Marks Office—would possibly be able to distinguish the quality. If Mr. Hoyle means that when a man has a superior cloth he ought, if it is practicable, to have some means of marking that cloth to show to everybody who buys it that he is buying the same good cloth that he bought before, then I fully agree with him.

2752. Do you think the experts of the Board of Trade would be able to say whether it is a distinctive heading or not?—I think they would be able to do that, but I certainly do not think they would be able to say which was the better cloth of the two. That does not seem to me a very essential point, because if

Mr. J. Smithson.

11 June 1887.

you could make it desirable to register any heading at all, then I would let any man register a heading regardless of the quality. "The Trade Marks Office "would have a serious difficulty to determine the "distinctiveness of any line headings *per se*, but the "difficulty of their deciding upon a trade mark would "be immensely intensified if they had also to enter "into the question of quality of cloth; the mere "statement of the principle will ensure its condemna- "tion. In answers to Questions 1501 to 1505, colour "is recommended as a distinguishing quality of a "heading in registration. But colour is a very "uncertain element upon which to found distinctions. "It is impossible to keep the colours of dyed yarns "uniform. In my experience as a buyer of large "quantities of goods in which coloured yarns are "largely employed, I find that even when manu- "facturers have a standard shade to work to, it is a "common circumstance to mis-match the shade. In "a fixed shade of green, for instance, manufacturers "have frequently used all shades from a dark indigo "green, scarcely distinguishable from dark blue, to all "shades of chrome and aniline greens. Yellow, which "is referred to by Mr. Hoyle in Answer 1531, is a "colour largely used in the cotton trade, in canary, "lemon, amber, orange, and buff shades, and is nearly "as variable as green or pink, and at gaslight, when "weaving is going on in many mills, the various shades "of yellow are indistinguishable. Few dyers produce "uniform shades; and the fact that one person in "every fifteen of our population fails to distinguish "shades of colour, while many are absolutely colour- "blind, shows how uncertain it would be to depend "on colour." I not unfrequently make headings which as between themselves are very distinctive indeed to my eye, and about which I thought it was utterly impossible that our men could make a mistake, and my father has thought they were the same. It shows how the difficulty comes in, and how a man may mistake two things; and if he might think two things were alike which were different, he might make two things which he might think different, and yet which would approach so closely together as to be a colourable imitation. "Not only so; two different weavers cannot put "in the same shade of colour so as to produce an "identical result, because the coloured yarn is, as a "rule, knocked closer together than is the rest of the "cloth, and weavers vary in their ability to 'knock "up.'" That is the case. It helps to increase the variety, though I should not say that was a very serious point. "Again, the counts of coloured yarn "are not uniform; so that it is possible with 10 picks "of a coarse yarn to produce a similar effect to 15 "picks of a finer yarn." That is so. "As the "coloured yarn is put across the grey warp its effect "is governed by the thickness of the grey warp; so "that precisely the same number of picks put into a "fine cloth will be quite unlike the effect produced "by the same number of picks of the same coloured "yarn put into a coarse cloth." On the question of colour I should like to call your attention to some patterns which I had made here [*producing some*]. This is the wool which we employ for making our woollen headings. We make them in a variety of things,—cotton, waste silk, and cords. We mix them—cotton, waste silk, and cords—together. These are samples of the wool. I have five colours here. I took, last Tuesday, several sets of these five colours, and gave them to different men. I cut some small slips of a heading. I took a piece of one of those headings and cut it up into narrow slips, such as these, and I gave one of each of those three to the different men, and I said: "Make that heading as "nearly as you can upon such and such a cloth," and I gave them the marks of the cloth; and this is the result [*producing headings*]. Here you see different shades of colour produced. There are different things which cause that. As you will no doubt understand the cloth is made of two sets of threads, which we call the warp and the weft. The warp runs lengthways of the cloth; the weft runs crossways of the cloth. The wool is put in as weft; it is put in across. If you have a large number of ends in the warp, or thick ends in the warp, or both a large number of ends, and a small number of ends in the weft, and those light ends, then you get a poor heading, because the warp comes to the top. These headings are practically a very fine check. Perhaps, you might say, in *that* cloth the warp and the weft are about equal in their effect, inasmuch as in the arrangement of the loom we always try to throw as much of the weft on to the surface as possible, as it improves the appearance of the cloth. In *that* case the weft very much predominates, and the consequence is that there you have a full, rich heading, and here you have a very light heading. So that if you take this centre colour, you find considerably different shades upon the cloth itself.

2753. The headings are of the same material?—Of the same material, made from those identical wools. In *that* case, in the quarter inch, you would have about 21 threads, in that particular one; and in this one you would have about 12. The difference in the shade produced is considerable. "I do not regard "the materials used to produce variations in effects "in headings, as suggested by the answer to Question "1500, as of much practical value. Cotton can be "made to look like silk and worsted. I have seen "jute made to look so like worsted and silk at to be "indistinguishable from it, except on minute investi- "gation." I may tell you, that in going through our heading book I have to look carefully at a heading before I know whether it is made from wool or from cotton. "A further objection to the registration of "line headings lies in the fact that weavers cannot "use their materials with precision of breadth of the "various stripes, and they would lack a characteristic "of a valid trade mark, viz., constancy or uniformity. "A stamped design can be produced with uniformity, "but line headings are variable, as they depend upon "eye, counting, and manual labour." If your Lordship will look at this for a moment, you will find every variation in width there, although I asked that they should keep to a pattern as much as possible. "As "regards line headings being registered under the "Designs Act, rather than the Trade Marks Act, as "suggested by Question 1519, I should say that they "are unsuitable on two grounds, viz., that mere "parallel lines would not constitute a design; and "that protection to a design registered under the "Designs Act is valid for three years only, after "which the registered design becomes public pro- "perty. This is, in part, the reason why my firm "sees no advantage in registering under the Designs "Act their numerous flushed border designs, as I "explained to the Committee in my evidence on the "26th March last." It would be of very little value to us if the registration had to be for three years only, because sometimes it takes a long time to get a cloth into use, and it is the old established connections which are of value.

2754. Do you find in your experience that these cloths are sold by the headings or by the quality?—By both. For instance we have a cloth which we call E. 41. This is the heading which we have put upon it [*producing same.*] We are constantly making this cloth; and that is sometimes known as "Smithson's, E. 41," and sometimes as "Smithson's I. Brown." We make a heavier quality with two bars here in place of one, and then 3, 4, 5, 6, and 7. This heading was so much imitated in all directions, that we were forced to put a distinctive mark on it, and we put our own name, which is registered under the Trade Marks Act. We adopted this two or three years ago; and it is certainly questionable whether this cloth would have held its ground if it had not been for this mark. A cloth which becomes well known is very difficult to get a profit upon. For the merchant has great difficulty. Everybody knows it, and everybody knows the price of it, and he is bound to sell it very

Mr. J. Smithson.

11 June 1887.

cheap. What we found was that merchants had this heading put on a great variety of cloths, and sometimes they actually mixed our goods with others in bundles. For instance, if there were four pieces bundled together, they would put one of ours and three of others, and we were getting to this point, that people were getting disgusted with the cloth, not because they did not like our cloth, because they did like it, but because they never knew what they were getting, they asked for this cloth and could not get it.

2755. They sent an inferior quality?—An inferior quality, which might feel equally thick.

2756. And now they are sold with your name on?—Yes.

2757. You do not sell them without?—We send some abroad to foreign markets without. There are some merchants who will not put a stamp on. The case I alluded to just now, where they mixed the bundles was in Ireland; and in sending to the home trade we decline to send these goods with anything but the stamp. The parcel they give as before, with the old stamp on. Merchants as a rule do not like the stamp. Some will send it out. Where we find that there is no serious competition by other people putting this heading on to their cloth, then we allow the goods to go without a stamp.

2758. Would you call that a distinctive heading which can be registered?—I think it would be very difficult indeed to register the heading. I know in our own case I have seen different shades of that colour. If I were to go into the warehouse to-day, I could get down some old bundles, and we should have something which would not look exactly that shade.

2759. Supposing a competitor of yours puts orange instead of yellow?—That would be an imitation.

2760. (*Chairman.*) Have you any doubt that, in this case you have alluded to, where something very near that, if not exactly the same, has been put on, it has been put on for the very purpose of making it believed that it was Smithson's cloth?—Unquestionably, there is no doubt about that for a moment. But then if I were to go further and say that I could prove it, that is another matter.

2761. (*Mr. Hutton.*) Where they are mixed in a bale of your goods, that is of course, clear?—That was before the name was put on. The name was put on to stop that, and it did stop it.

2762. (*Chairman.*) At the time when that began to be done, these, I suppose, had got a reputation in the market, and there was nothing else then in the market which was not distinguishable from it?—I do not know that I quite follow that.

2763. You suggest that people have imitated this mark. They imitated the mark, I suppose, because the cloth with this mark on had got a reputation?—Yes.

2764. And at the time that it had got that reputation, this mark was so far distinctive that there was no other cloth bearing this mark at the time?—Do you mean no other cloth of equal quality.

2765. No other cloth in the particular markets in which this cloth was sold?—There were lots of other cloths going.

2766. I say bearing this mark?—No.

2767. (*Mr. Hutton.*) They tried to take your trade from you by putting a lower quality?—Yes, with that mark upon it.

2768. (*Chairman.*) My question was this: That at the time that people began to make this attempt, they made it because this mark by reason of your manufacture had gained a reputation?—Unquestionably.

2769. So that at the time you gained that reputation this was in that sense a distinctive mark?—Yes; it gained its notoriety by our making our cloth good.

2770. (*Mr. Hutton.*) But at present, the buyer buys that cloth on account of the stamp?—On account of the stamp.

2771. Not the heading?—Well, he buys it on account of the stamp and heading. He knows that if we put the mark on with this heading, it represents not only our quality, but that particular number of our quality. He knows that he can trust that name for always putting this heading on to the same quality. This heading still has a use, even combined with that stamp.

2772. Would not it be possible to protect the headings of a manufacture by adding a stamp to the heading on each side, some special design which could be registered. You have registered that?—Yes, that appears to me to come within the limits of the inquiry which Lord Herschell made, as to whether it would not be a good thing to prevent this kind of thing being done, this imitation; and then would come the question. By what means?. I think some kind of stamp would be the right way of attaining that.

2773. You cannot see your way to find some means of working a design into the heading?—Nothing but a straight design—nothing but lines. Beyond that anything is impossible. You can only do that with a jacquard or dobby loom, which is introducing an enormous expense at once. As to the difficulty of making a design in headings, I have a few more remarks to make. These headings were made by the same number of men, and from the same wool, and you have the shades coming again here. At first sight you might say *those* are the same headings—for all practical purposes the same; but if you come to define them, you find you have a difference in colour. That is a sort of brick red, and *that* is a bright scarlet. You find that the width of the heading is different; you find that the width of each bar is different. So that the width of the bars would be useless as a basis of design. And then, as I explained before, the number of threads to a given width is different; so the number of threads would again fail to form a basis of design. But then, when all is said and done, you might reply: "But I can see perfectly well that those headings are the same." An expert would say at once: "Any one of those is a colourable imitation of the other. It is as plain as daylight." But then it is so with a very simple heading. If you do not admit the width of the bars as a distinction, I should like to show what that inevitably leads to. I have here five headings succeeding one another. If you carefully examine those you will find that the number of bars in each is the same, the colours are the same, the only difference between one and another is the width of the bars. So that you see, you immediately have, if you admit that it was not necessary that the bars should be alike, an immense variety, and our contention is that unless you could accurately define it it would lead to an immense amount of litigation.

2774. The width of each separate stripe must be defined?—Yes.

2775. (*Chairman.*) Would not it be possible, supposing this were registered, to say that is not an imitation of it or a representation of the same thing at all. It is difficult to define, as I have once heard a learned judge say, when night ends and day begins, but you can say whether it is midday or midnight. No doubt you might have cases in which it would be very difficult to tell, but others, even though you have the same colours and the same number of bars might be perfectly clear. I do not think anyone could mistake these two for each other?—No.

2776. These two might be mistaken because the the general idea is created by the width of the centre dark bar, but I do not think anybody would mistake this and this. The character of them is entirely different?—No, but what I wanted to show was that it was difficult to lay down the distinctions.

2777. Would not the distinctions be arrived at not by laying down that it consists of so many lines and so many colours but that the one is or is not distinct from the other in its effect?—The expert would decide that, you mean.

2778. Yes?—I do not think it would be possible in the enormous number that there are. We have 6000 headings, I suppose we are a hundredth part of the

trade or rather less, supposing we say the rest of the trade have 50,000. I think amongst them it would be very difficult for an expert to decide.

2779. (*Mr. Hutton.*) I gather what you mean is that the exact width of every one of these stripes would have to be defined?—Yes, that has proved to be useless here, because these headings are all alike but of different widths.

2780. (*Chairman.*) The only method of distinguishing would be by the general effect of the whole?—And then there are so many that I think it would be impossible. Now in those two cases you said those might be mistaken [*pointing to those with the broad bar*]. They might be, but yet those are different. There are hundreds of headings in use in the trade more closely allied than that. Then, again, here there are five treated in the same way. The seqeunce of colours and number of bars is the same, but the width varies. *There* you get a different design. I showed that to our principal salesman in Manchester, and he did not know there was a difference between the two. The number of headings that one makes is so enormous that you would be constantly running into somebody else without knowing it. That is the contention.

These are our headings. This is the one we commenced with. No. 1 heading is still in existence. *That* is an open heading. We put that on our cloths for a variety of people. *That* is a private heading, which we put on for William Graham and Co., Manchester.

2781. (*Mr. Hutton.*) I suppose other manufacturers use that heading?—I do not know in this particular case whether they do or not. All the distinguishing marks which we put on for different merchants we put here [*producing another book*]. I have from 1 up to nearly 6,000. This book contains those confined to particular houses.

I think I understood your method of reasoning *there* (*pointing to the five headings alluded to in* 2773). You would say: well, if a man cannot make his heading which he has registered exactly alike, it does not much matter. What we want to do is to protect him from anybody else doing it.

2782. (*Chairman.*) Yes?—That I understand; but where a thing is so easily varied, one heading runs so easily into another that I think you would introduce a large amount of litigation, in which it would be difficult to prove the rights of the case. If you introduce colour, then it increases the number of designs which you could make if colour constitutes part of the design. At present I understand it does not; but that does not matter if there is an intention to alter the Act. I do not think you could make a colour part of the design. I do not know how you could define it. This shows how nearly you could come, and yet you are different if you take description. If you take the expert's eye, well, then it is another matter. If you take the expert's eye, you say those two are very much alike. Would you, *this* being registered, decline to register *that* if you were an expert? Supposing it came to a court of law who would decide whether that was a colourable imitation of this or not.

2783. (*Mr. Hutton.*) Do you use noil silk, the waste silk?—Yes.

2784. Have you used it for long, for many years?—I believe about 1880; I remember doing it; I remember ordering the material for it. With regard to material, I really do not see how you are to make distinctions between one material and another. It is so difficult to see the difference between the two. If you could say that one man should be allowed, having discovered waste silk (if one man did discover it), to use it, and that class of material alone, what I should have to say would be, that I do not think any man is entitled to use one material. It is almost like a man discovering the growth of cotton.

2785. (*Chairman.*) I do not think the suggestion would be that he should be alone entitled to use that material, only that the use of that material in a particular way in the particular design would be one of the elements in considering how far it was distinctive and how far anybody else imitated it. One might have a broad stripe of that material down the centre with small stripes of the other material, and another person might have his broad stripe of the one material and his narrow stripe of the other. Those two might be perfectly distinctive if the colours were different and it were otherwise different it would not give the exclusive right to the material to any individual?—No; but then in that case, in the case of using a silk for a particular design, you would have the difficulty in defining that design more or less. You would have all the other difficulties.

2786. You would have all the other difficulties, but, of course, if you had a fresh variation, namely, the variation of material in one particular part of the design, it makes it more distinctive, and more easy to say that another design which has not that particular characteristic is not the same?—I think there would be a difficulty in the matter.

The witness withdrew.

STATEMENT subsequently put in by Witness.

My contention is that it is *impracticable* to register headings as trade marks.

If, therefore, it is impossible to make the use of another man's heading the basis of a civil action, I do not see how it would be possible to make it the basis of a criminal action.

In either case the innocent maker or user would be exposed to risk, and the risk of criminal proceedings would be the worse of the two, and at the same time in case of guilt it would be very difficult to fix the responsibility on the right shoulders.

The only practicable means of protecting a standard cloth appears to me to be the use of a stamp as a trade mark, and that is open to everyone at present.

I should like to add that my own firm would be exceedingly unwilling to take legal proceedings, the issue of which would be involved in the right to use a particular heading.

Adjourned to Wednesday next at 11 o'clock.

Committee Room, No. 17, House of Commons.

Wednesday, June 15th, 1887.

PRESENT :

LORD HERSCHELL.	BARON HENRY DE WORMS, M.P.
THE EARL OF CRAWFORD.	JAMES F. HUTTON, ESQ.
THE RIGHT HON. A. J. MUNDELLA, M.P.	

LORD HERSCHELL IN THE CHAIR.

Mr. J. L Whittle.

15 June 1887.

MR. JOHN LOWRY WHITTLE re-called, further examined.

(*Witness.*) I should like permission to refer to Mr. Hutton's question to me at 2434, as to the numbers of marks dealt with by order of court out of the B. list. The discrepancy that he points out between the statement made by Mr. Chamberlain in 1885 and the figures I gave is explained in this way: Mr. Chamberlain referred to the actual number of orders, but several of the orders included a number of marks. There was not a separate order for each mark. The actual number of marks in Class 24 are 408, and in Class 23 226, making altogether 634 marks which have been removed from the B. list.

2787. (*Chairman.*) You are referring to the question of the action of the court with regard to the determination of the Committee?—Yes.

2788–97. (*Mr. Hutton.*) Do I understand there were 634 cases actually removed from the B. list and registered afterwards?—Yes.

2798. (*Baron Henry de Worms.*) There was a suggestion made that when various goods in the same class are registered for the same trade mark, as they are very often, one fee should include the whole—a cumulative fee. That was a suggestion made by Mr. Johnson. What do you say about that?—Mr. Johnson's evidence was rather in favour of a certain increase in the fees.

2799. (*Chairman.*) He wanted rather to make the earlier charge greater, and the later charge less?—I intended to offer some suggestions as to that—as to whether it might not be worth while to make a separate charge for word marks. A single device is a much easier thing to search for. I suggest it would be desirable to maintain the 5*s.* fee for single devices, and perhaps have a large fee for a mark covering the whole class.

2800. (*Baron Henry de Worms.*) Mr. Johnson's suggestion was, if I remember right, that a fee of a guinea should be taken, and that that should include the registration of the trade mark belonging to a person in various sections of the same class?—I do not recollect that. If a mark is applied for, say for a particular article—whisky—it is much easier to search for it than for all fermented liquors and spirits.

2801. I understand that merchants often register the same trade mark on different sorts of goods, particularly in Manchester; is that so?—No. They go into different classes. A man might have a mark for his cotton piece goods and cotton yarns.

2802. In 23, 24, and 25?—Yes.

2803. (*Mr. Hutton.*) And he pays a separate fee for each class?—Yes. On the old system an additional class was cheaper after the initial registration. If a man registered in 10 classes he got a reduction on the other fees; but as all the fees were reduced when the Board of Trade carried that Act there was a separate charge made in each class.

2804. (*Baron Henry de Worms.*) Supposing a man registers under these three classes—23, 24, and 25. He registers in the first instance for 23, and a month or two months afterwards he registers in 24. Would not he have to go through exactly the same course as he did when he began with 23?—Yes; and it would be the same cost and labour to the office.

2805. Do you think it would be practicable to charge one fee supposing a man came to the office and said: "I wish to register in Class 23, but I shall "continue to register the same trade mark in 24 "and 25"; do you think it would be possible for him to pay a fee down which should cover, we will say, one year of registration under those three classes?—A limited time of registration?

2806. No; if he had to take out another trade mark in one of the classes, the year having elapsed, he would then have to pay again; not that the registration of the trade mark which he had already taken out would have lapsed?

2807. (*Mr. Hutton.*) Have you the figures of 1884 and 1886 with regard to income and expenditure?—No, I have only taken 1885.

2808. Was the income in 1886 larger than in 1885?—I should think not. A good many marks have been held over on account of these questions; so that it is not in a normal condition in 1866.

2809. (*Baron Henry de Worms.*) Have you any suggestion to make in answer to that question of mine, whether it would be possible?—It would not be impracticable that an applicant should have a sort of dormant claim to register in other classes by paying an additional fee. That would be practicable enough I should say. I do not know that it would be satisfactory generally.

2810. What is the fee in the first instance, 5*s.*?—Yes.

2811. Supposing under the three classes I have mentioned he paid a lump sum of a guinea, and for that he would not have the trouble of going through all the formalities in each individual case during a year. The actual difference to the office would be 5*s.* profit?—Yes.

2812. And then, at the expiration of the year, if he wished to have another mark in the same classes, or one of the same classes, he would have to pay a guinea again?—There would be this: it would complicate the indexes, because we should have to search against that during the time. I think it would require to be a larger payment to make it satisfactory. There would be the getting the copies. He would have to send in additional copies, and there would be the indexing of them. It would not be advertised, I presume, in the other classes?

2813. No; but could not you adopt a system by which you might go to a folio, and in this folio would be entered the names of those who paid a composition fee of a guinea for the privilege during the year of registering in Classes 23, 24, and 25, without an additional fee?—Yes, it could be done, certainly.

2814–15. Would not that simplify matters very much to the person who registered and to the registrar?—I do not think it would tend to simplification, because the registration must proceed on his completing documents. He would have to do that ultimately; and we should have to give him a protection without the ordinary machinery for recording his claim in the office. Where we want to refer to a mark, and have

it properly recorded, we can refer to the separate copies. It might be done, but I do not think it would simplify things. If it were an advantage to owners to have a sort of suspended right of that kind it might be adopted on a sufficient fee, but it would be more than a guinea I should say.

(*Witness.*) Then I should like to say something further as to the question of words. Both Mr. Lack and the Board of Trade thought they ought to carry out the new Act so as to meet what they considered to be the public wishes as fully as possible. There were a large number of marks approved by Mr. Lack early in 1884, which I was myself rather afraid of—such words as "Health Belt," and so on; and then there was a conference afterwards with the Board of Trade, and such words as "unique" were considered safe words. Then, the idea was suggested of prefixing the definite article to a word; and this was defended on the ground that it indicated a special use of an ordinary word, such a use as everybody would be supposed to recognise, and attach a particular meaning to "The Unique," "The Perfect," "The Excellent," and so on. Accordingly almost any dictionary word was passed for a long time, or any name, where the applicant would consent to prefix the article. That proceeded until 1885, when an applicant who applied for the word "Alpine" refused to prefix the article "the." It was taken before the court, and the court said that prefixing the article; it did not help to get over the difficulty. Mr. Justice Chitty went on to pass the word "Alpine" as a distinctive word. I happened to be away at the time; but I suggested an appeal. I mention that as illustrating what I suggest as to the conduct of the legal proceedings hereafter. I saw Mr. Murton as soon as I came back, as soon as I got the order, and asked him to see what the time was for an appeal. He said the time was very short. Under the old procedure of the Commissioners of Patents he would have entered a notice of appeal at once, and then had a consultation with counsel. This was in May 1885. He told me that he could not meddle in the matter without the authority of Mr. Calcraft. I wrote to Mr. Calcraft that day pointing out that the time was elapsing. It was in June 1885, a very eventful period. The time did elapse before any steps were taken in the appeal. There was a consultation of the law officers later on in the year, and they advised that a much more restrictive system should be introduced. They agreed that the registration of the word "Alpine" opened the door to all sorts of geographical words, and it could not be worked. When this very liberal system, or what was called a liberal system, this very extensive system of registration was adopted in 1884, a case came of "Domestic" for tea. The Comptroller would not have taken "Household" for tea, or "Family" for tea, because they were recognised terms; but he thought on prefixing the article he might take "Domestic" as a fancy word. His proceeding was challenged by the Chamber of Commerce in Birmingham; and I wrote this letter as explaining his view:—"That section has been a matter of long consideration with the Board of Trade, and it was determined some three months ago that to take the phrase 'fancy words' in the sense that a scholar or a literary man would use it would not be a just interpretation having regard to the subject matter of the Trade Marks sections of the Act. Very ordinary words, it has been found, when associated with particular goods, have acquired a special meaning, and proved indications of property useful to the public, and valuable to the manufacturer or retailer. The Board of Trade, therefore, directed the Comptroller that the section should be interpreted in this larger sense; and you will see many such instances in recent numbers of the Trade Marks Journal. In the case you mention tea may in general language be described as 'Domestic,' but this epithet is not an ordinary description of it like 'Souchong' or 'Green,' and may, the Comptroller thinks, be associated with a particular business in tea, should the proprietor care to make such a claim. 'Mitre,' however, would be considered a 'fancy word' in the strict sense of the term, in being altogether out of its ordinary use when associated with tea." The principle, I endeavour to suggest in that letter, was that where a word was not used or required in connexion with the goods it might be safely adopted, if anybody chose to adopt it, if it were not likely to interfere with trade purposes. The difficulty remained of course, of what was to be protected; or how far, when you got such a word as "Universal Provider" you could object to "Universal Purveyor" or "Universal Caterer," and things of that sort.

2816. (*Earl of Crawford.*) Has "Universal Provider" been used as a word mark?—It is the registered mark of a famous tradesman.

2817. It is Whiteley's?—Yes.

2818. Is that put on his own goods, or is it merely a description of himself?—He has claimed it as a mark for use upon his goods.

2819. (*Baron Henry de Worms.*) Is that registered?—"Universal Provider" is registered.

2820. (*Chairman.*) For what purpose is that used? It is not put on goods, is it, at all?—Yes; you have it on all his boxes. I will not say on all his goods, but on the cases.

2821. (*Baron Henry de Worms.*) The globe is the trade mark?—He has two globes also as a trade mark.

2822. Would you register the words "Universal Provider" without those globes?—They have been, on the principle that I have endeavoured to define in this case that nobody had occasion to use the term "Universal Provider" in ordinary business.

2823. (*Earl of Crawford.*) Every shopkeeper in the country in Scotland calls himself a "general merchant." That is very much the same sort of thing as "Universal Provider." If there was one single man who got "General Merchant" you would cut out all the others, although it was a common term?—"General Merchant" would be known as a trade term. Well then, there is a letter of Mr. Bartlet that has been before the Committee that gives some illustrations. He cites a case which illustrates the difficulty, "Sliced Hooks," for fish hooks. That seemed to me plainly descriptive, and I objected to it. Applicants produced declarations at the hearing that the proper term for describing these things was "two barbed" and "three barbed," and that "sliced" was not a known trade term, and would not be understood in the trade, and on that ground the Comptroller was induced to give it them.

2824. (*Baron Henry de Worms.*) You were asked the other day, before the Committee on Merchandise Marks, as to the similarity of two marks, and the two marks presented to you were not similar in design, one being a figure of Victoria, and the other being the head of a horse. The colour was the same, and the writing underneath had some similarity, one was Mahratti and the other Burmese. I understood you to say there might arise a difficulty as to the registration of the mark of the horse's head, the other one having been registered, because there was some sort of general similarity in colour and general aspect of the two marks?—The difficulty would be in the mind of the Comptroller and the observer, because the sequence of colour was so remarkable. The Comptroller could not have refused them as the law now stands. There were four devices, and except one which was common to the trade, which would have to be removed; the three other devices were perfectly distinct in each case. There was a sequence of colour running through the two combinations, which was a very remarkable circumstance, and I should certainly not have passed the second mark without discussing it with Mr. Lack.

2825. The impression left was that the Board of Trade, the Department of Trade Marks, might have hesitated to register the mark with the horse's head, because the general arrangement of the mark in colour presented some similarity to the other mark which

Mr. J. L. Whittle.

15 June 1887.

was registered?—All the hesitation I expressed was that we should look at it very carefully to see whether we could get rid of such a disagreeable circumstance as the identity of the sequence of colour, but that we could have refused it I did not think for a moment. I was asked whether it was not a suspicious circumstance, and I thought it was, but it was not a suspicious circumstance which would have justified the Comptroller in refusing it.

2826. (*Chairman.*) Do you think it ought to be penal, even though there be two distinct trade marks —two distinct subjects—the proprietor of each of which is entitled to it in all colours, if a man so colours his trade mark, his ticket, we will say, as obviously to intend to imitate, and, by imitating, deceive those who might be dealing in the goods?—I think it would be very desirable that the Comptroller in the case referred to should have been able to say: "Choose some other combination of colours."

2827. Colour forming no part of the combination, the Comptroller has no power; and, besides, it might never come before the Comptroller. I am putting the case where you have two trade marks registered in black and white, but the proprietor of one of those trade marks colours it in a very particular and fanciful manner—something very distinctive—which is so distinctive that it is the thing that would strike you even before the design, and perhaps you would never get further than the particular colouring of it. The owner of the other trade mark, those goods having got a reputation, colours his trade mark so as to almost conceal, it may be, the particular design, to involve it in this very special and peculiar form of colouring, with the obvious intention of deceiving people into the belief that they are buying the other man's goods. Do you think that ought to be made penal?—I think a court would probably stop it. There are plenty of cases which go that length.

2828. It could be stopped only by action, and by an injunction, which is a cumbrous proceeding. Do you think it would be right to make it the subject of a penalty?—I should think a resemblance of that kind, of colour, would be very easily tested, and it would be very safe to make it a penal prohibition.

2829. (*Baron Henry de Worms.*) That question really arose before the Committee, because the question was this: These marks are used by bleachers, and the contention was that the similarity between these marks, the general similarity of colour, was such as that it might expose the person using it to the penal clauses of the proposed legislation?—Yes.

2830. I want to know from you whether you think that two marks absolutely dissimilar in design could be brought within the penal clauses of the proposed legislation because there was a general similarity of outline and colour?—It would, of course, be very hard if the man did not know that there was this sequence of colour in existence; but if people do attach importance to this sequence of colour I think it was a wrong thing to take the same sequence of colour, even for separate objects, and that it ought to be interfered with.

2831. But then colour is not registrable?—No, not under the present Act. I am assuming that this Committee might be considering some amendment of the Act. I intended to offer an observation upon that clause. I think the object of excluding colour was to give additional protection to the owners of great devices, like that of Bass, for instance; that there should be no danger of a public department letting in a similar device in different colours. That was the main object. If there was an amendment of the Act it might be worth while introducing a clause which should impose on the Comptroller in considering a question of resemblance the duty of dealing with the device first of all, adding the duty of considering secondarily the question of colour.

2832. (*Chairman.*) The difficulty would be this: if you objected at all to the colour a man might send in the same device without any resemblance of colour at all, but there would be nothing to prevent him afterwards, unless you make the colour part of the registration, putting what colour he pleased upon it?—I should suggest there is no occasion to exclude colour from being part of the registration.

2833. (*Earl of Crawford.*) If you had the colour part of the registration it could really only affect the ticket which is outside the cotton goods?—Tickets and face plates.

2834. If you allow a combination of colour such as that spoken of by Baron de Worms, it might be that a conglomeration of colours would entirely overlie and sink the design, which would be in black and white, and that would appear on the ticket outside the bale of goods, but the moment they opened it they would see that the trade mark was entirely different; and yet the outside would be very misleading. Would not that be the case?—If colour were recognised as part of the registration the owner would be bound to use it in the colour in which he deposited it.

2835. (*Mr. Hutton.*) What would be the objection to having registration in each colour in which the stamp or ticket is used?—I do not see any.

2836. It would involve separate registration?—Yes.

2837. That would be merely a matter of increase of fee?—Yes.

2838. (*Baron Henry de Worms.*) In reference to the case of the Victoria and horse's head trade marks, to which I have referred, supposing this had been presented, as it would have been in the ordinary course, for registration, could you have refused it?—No, we could not have refused it.

2839. (*Mr. Hutton.*) You would not register the combination, not the 40 yards?—The 40 yards would be disclaimed. Except for that we should register the whole.

2840. He would put in a disclaimer of the small stamps?—No; they were private stamps.

2841. (*Chairman.*) The two circles, and the 40 yards, and the "Best Cloth"?—The 40 yards he would have had to disclaim as common to the trade.

2842. (*Mr. Hutton.*) He would have to disclaim everything but these two stamps and the name?—There were two tickets that seemed to be very good marks besides the centre part. May I submit to you, on the supposition of the Act being amended, to leave out section 67 altogether?—That is: "A trade mark "may be registered in any colour, and such registra- "tion shall (subject to the provisions of this Act) "confer on the registered owner the exclusive right "to use the same in that or any other colour."

2843. (*Chairman.*) You could not leave it out altogether, could you?—I was going to suggest that this form of clause would do everything which the advocates of that clause had in view: "That in determining "whether one mark resembles another the Comp- "troller shall, in the case of marks consisting of, or "showing devices, consider in the first place the "actual devices irrespective of the colour or colours "shown in the respective marks; and shall further "consider whether by reason of the colours shown, "if any, there is a resemblance calculated to "deceive."

2844. What benefit would you get by that? Suppose you said, "This is so coloured as to be calculated to deceive," and then the man registers it in totally different and distinct colours; are you going to make the colour so much a part of it that it is not his trade mark if he makes a change in any of the colours?—If that section were struck out I think he would be bound by his colour, the colour which he deposited.

2845. That would be rather a serious thing. We are told there is very great difficulty in getting the same colour. The colours got at a particular time vary from what you get at another time; and you might be said to have departed from your colour when you were really struggling after getting the same colour?—Yes. It is a question of rational interpretation.

2846. (*Mr. Hutton.*) We had some tickets of some East India houses where the general effect of the

colouring of the ticket was similar, but the details of design were totally different?—Yes.

2847. We had, I think, Indian goods?—Yes, there were several of those. That case I showed you of Messrs. Ralli, the Fakir mark, was a question of the general resemblance of colour.

2848. What would be the effect on all those registered trade marks if such a clause were introduced into the Bill as to make it compulsory to register in colours a ticket or stamp?—The effect on the registered marks I could not say.

2849. It would make it rather difficult as to all those thousands which have been registered?—Yes; you would have to leave them to the question of renewals. It would not do to interfere with the registered marks, you would have to make it prospective simply.

2850. Then you would have to wait 14 years?—They are maturing pretty rapidly now. To return to the question of words. The original theory, first started, was to exclude all dictionary words, to accept only invented words. That was complicated by the principle that they were not to be descriptive, because almost all the great invented words, are distinctly descriptive, as was illustrated in the "Valvoleum" case, which was not a dictionary word, where the Master of the Rolls held it to be an ordinary descriptive word describing valve oil, and he would not protect it from "valvoline." That difficulty was further complicated by the International Convention, and the development of the export trade generally, showing the importance of foreign words. The primary value of a word mark was to protect the name of the device. There was a case in the time of the Commissioners of Patents where a man was registered for the word "Vulcan" as an old mark, and another trader came in with an ordinary representation of Vulcan, a naked man at a smithy, and that was proceeded with until it was stopped by an opposition. We had the word "Vulcan" already registered, but the device was proceeded with for another man. There was a very early case after the Act of 1883 that illustrates this difficulty of foreign words. A man came for a Russian word and he was asked to transliterate it, to put it into Western character, and it turned out to be "Czaskoi," which he said he translated as "Noble," "Princely." Search was made for "Kaiserlich," and similar words, and I found the word "Imperial" for exactly the same goods. It turned out to be a very important mark of a firm that exported goods to the Baltic, and this "Czaskoi" was really the Russian form of this word "Imperial."

2851. (*Mr. Hutton.*) What have you done about the word "Yum-yum"?—That is now under appeal to the Board of Trade. That was objected to by the Comptroller as not being a word in any language, but a mere exclamation, something like—"Oh! how nice."

2852. (*Chairman.*) That would be admissible?—No.

2853. As not being a word at all?—Yes.

2854. I thought one definition of a fancy word, suggested by some judge, was that it was a word which was a man's own invention?—That is one of the enormous difficulties that you have if you register mere agglomerations of letters, irrespective of their meaning, you may possibly be registering the names of valuable marks in some region of which we have no knowledge. Anagrams have been admitted. There is a very celebrated bootmaker of the name of Pinet, and he has registered "Tenip." There you have some idea you can go upon; but if you take a word that is made up without any idea, so that you cannot trace it, you are involved in grave difficulties. I think a descriptive word is a very good fancy word, and there is no reason why it should not be registered, if it is not required for purposes of the trade.

2855. (*Mr. Hutton.*) The word "Dislixum" is registered, is it not?—I do not think it is registered, but it has been suggested. I believe it has been registered as part of a mark. There is a word the significance of which is clearly understood. It is a slang way of putting an English sentence, and that makes a very good word. But if you once lose sight altogether of the meanings of these words I think there is danger that your word registration may do a great deal of damage to property. There was a claim for an owl from people trading in Japan. The device of the owl was barred by the property of a well-known Japanese firm. Then they sent in a claim for the word "Koko." They said it was a fancy word. On inquiry we found it was a familiar Japanese word for an owl, so that it was the Japanese name of their rival's mark. I might mention two cases further as regards words. There is a registered mark of a semi-nude female figure with rays round it and the word "ἕως" at the top. That belongs to an export firm in the city. The other day an applicant came for the word "Aurora." It is a perfectly *bonâ fide* application, I believe; but "ἕως" of course is the Greek word for "Aurora." I do not know whether in modern Greek it still exists. At first the Comptroller took Latin words pretty freely, much more freely than Greek words. Greek words are most of them found in modern Greek. There it is practically the name of a registered mark, in another language. "Ἥλιος" is another example. "Ἥλιος" was applied for, and being in a dead language the Comptroller supposed at first he could proceed with it, but he found that it was the modern Greek for "Sun," and that there was a sun mark well known in the Athenian market, and people exported goods under the sun mark to Athens.

2856. (*Earl of Crawford.*) I cannot see really that we are to take into consideration these Japanese words?—Well, there is the way in which it would have worked. This man would have been able to produce the Comptroller's certificate in Japan of his being registered as the owner of the name of the other man's mark.

2857. (*Chairman.*) Perhaps it might be possible to require an affidavit either that the word is not a foreign word or a word in use in any language, or if it be what its meaning is?—I think, if you once lose a grip of the meaning of it you are exposed to all sorts of dangers and difficulties. Take a word like "Zoedone," there you are on firm ground. It is descriptive, but it is not necessary for trade purposes or for commercial or for scientific purposes. Another difficulty is how far you are to deal with that question which Mr. Johnson raises, as to homophonous words. "Zoedone," I should contend, would be protected against "Zoedor," but it could not be protected against "Vitador," which is a change the other way.

2858. (*Mr. Hutton.*) You might register "Zoe"?—Yes, possibly. There is a well-known term, "Eno's Fruit Salt," which has got registered in some form or another, and there is a rival firm in the north of England advertise "Trio's Fruit Essence."

2859. (*Baron Henry de Worms.*) "Eno" is the reverse of "one" that is all?—Yes, it is an anagram. The question of similar sounding language is recognised by the Court in the case of the Sanitas Company *v.* Condy in our recent reports, where the objection was that one trader called himself the Sanitant Company, the other people being registered as the Sanitas Company.

2860. (*Chairman.*) What did the court say to that?—The court stopped it.

2861. (*Earl of Crawford.*) As against "Sanitas"?—Yes, they gave a certain protection to that word. That makes me fear that the definitions suggested do "not secure to a settlement. Mr. Cutler's definition comes, perhaps, the nearest, but he talks of what is "not necessarily descriptive." If you leave those adverbs in I think you do not get over the difficulty; it is better in drafting to avoid them altogether. Mr. Justice has referred to the American system, which certainly would be something to go upon if it could be adopted—that is, to insert the phrase "any arbitra-"rily selected word." It would be quite outside the

Mr. J. L. Whittle.

15 June 1887.

spirit of the English law, as the Portugal oyster case shows, that you should not have a mark which suggests what is not true. Steel for glass, for instance. There may be no great harm in it, but it makes the thing preposterously absurd and confusing to have the names of other goods applied by way of fancy to goods on sale.

2862. But they actually do put that on vegetable ivory, for instance, and ivory black. Vegetable ivory is a known subject. There is a vegetable applied to an animal product?—Yes, that describes a certain product. It is as good as ivory though it is a vegetable product.

2863. Vegetable ivory is a nut?—Yes.

2864. (*Mr. Hutton.*) How would it apply to such a case as this where a firm advertised their own whiskies as "Columba blend," which is sold on board the "Columba"?—"St. Columba" would be taken as a good fancy word.

2865. But this is Columba merely applied to the name of the whisky sold on board the "Columba"?—I forget whether there is a place called "Columba"? I might mention a great store-house of invented words and preposterous words. I was looking at the Post Office the other day to see if the telegraph lists could throw any light on the question. The great majority of them are words borrowed from foreign languages, and are really dictionary words in German, or French, or Spanish. But there are invented words, as a club address, "Palwat." That may be the name of some mark in some dialect, Chinese, or something of the sort, we cannot tell. I would submit this form of definition for consideration. It seemed to me it might possibly be worked so as to avoid most of the difficulties. Get rid of the word "fancy" and get rid of the word "distinctive." "Any "noun or adjective expressing a distinct idea not "being the name of goods or an ordinary proper "name." I put in an ordinary proper name to let in such names as Shakespeare, Milton, Homer, "or a "trade term in the class in which the mark is applied "for and not used or required in the language of "trade to describe the goods named in the application "as regards origin, quality, use, or mode of dealing." I thought those eight limitations might enable you to meet the public wants by taking a great variety of words and avoid litigation.

2866. When you say the noun must convey a distinct idea, would not that exclude all invented words which convey nothing?—"Zoedone" conveys a distinct idea.

2867. But it would exclude a large class which have no meaning, a common fancy word?—Ozokerit conveys a very distinct idea, perfumed wax. I think those are good words; you must hold to an idea. Concrete was the term I thought of suggesting at first, but I do not know that that would be sufficient. I want to get rid of such words as "Twilight," "Shady," and all those things.

2868. The Panklibanon bedstead, which one sees largely advertised, does not convey any distinct idea, at least, to my mind?—I think you could get at some meaning. It is something that anybody can recline on at their ease.

2869. I am not suggesting that you could not find a meaning for it; but that seems to show that the word is certainly not used to convey any idea; it is used as a mere name to catch people's eyes?—No doubt, it is for the advertisement purpose. If you pursue that advertisement purpose, and are content with a mere agglomeration of letters, you are in danger of giving away somebody else's property.

2870. Take "Eno," for example; that conveys no idea at all; why should not that be a good fancy word?—"Eno" is taken as a trade name; it is not registered.

2871. It is taken as a trade name, but it might be registered; you might have "Eno's Salt Cellar?"—If you take anagrams, that is something to go upon.

2872. What I was suggesting was that your definition seemed rather narrow when you said it must convey a distinct idea?—I do not know that you can let go some old idea. I want to get rid of the mystic. We have a lot of these intellectual terms applied; "success" is one. We have a lot of vague abstract terms; "morality" is another.

2873. I do not know why you should not have a fancy name, such as "Sociology Sauce?"—"Society" has been frequently applied for. It means a fashionable quality of goods.

2874. "Society" might be objectionable as preventing people calling their goods society goods, and, therefore, fit for society use, but such a word as "sociology" is a completely fancy word in relation to any kind of article that you are selling?—Yes. We have "Reform," "Home Rule," "Union." "Union" has been objected to as more or less descriptive; but "Home Rule" is very popular as a trade mark for domestic goods, "Home Rule Soap," and so on.

2875. (*Mr. Hutton.*) Has that been applied for?—Yes, and accepted.

2876. It is now registered?—Yes. "Redistribution" was a very common one. There was a great run upon that. I thought one might get in a lot of words which at present we are obliged to exclude, such as names of small places.

2877. (*Chairman.*) Would you admit "redistribution" as applied to cloths?—It may have been accepted, but now the Comptroller would hold it over until he got some light from your Committee. "Words not used or required by the language of trade." It is important to keep that in. There are words which may be possibly descriptive, and which are no harm, for nobody is likely to want them, and in that way you might let in the names of lots of villages for what they were worth without harm to anybody. For instance, in the Melrose case I thought it was rather unfortunate that that could not be accepted. It was no harm, and it was an attractive name. If the goods did not come from Melrose, and there was no likelihood of a trade in perfume at Melrose, there was no harm in giving it to anybody.

2878. (*Earl of Crawford.*) Supposing that there was any article which got a considerable reputation by being known as the Melrose, what would hinder anybody from going and setting up a trade in the place itself, selling the same class of goods, dating their letters from it, and asking for orders? The chances are they would do quite as much damage to one as to the other?—You cannot get over the difficulty that such marks are weak. These invented marks cease to be properties after a time. If "Melrose" was registered and another man set up in business there we would not take Melrose as his mark. He might put it on his address and describe himself on his labels as So-and-so of Melrose.

2879. (*Chairman.*) If a man afterwards set up his works there he could not be stopped dating his letters from Melrose, if he did not try to get a benefit from it, and if he used some other trade mark to differentiate his own goods he would not suffer. On the other hand, you may say that if a man takes the name of a place he takes it subject to the chance that somebody may afterwards manufacture the same goods there and date his letters from there, and some people may think that they are the goods that have that name as the trade mark, but that is the risk that he takes?—That is the reason, I think, you will see on which the Glenboigh case, the great Scotch case, went. There they protected the name "Glenboigh"; it was to a certain extent descriptive. They prevented a man who owned a part of the same seam, though it was the proper description of the seam, from using the term "Glenboigh" in such a way as to suggest to ordinary observers that it was the same business as the other man's.

2880. (*Mr. Hutton.*) Mr. Johnson in his evidence mentioned the fact that the Board of Trade had accepted the words "Right sort of Tobacco," "Pink of perfection," "Cherry Ripe," but that "Bound to Win," "Honour Bright," and "Night and Morning" had been

refused?—Those were cases when the practice was a little unsettled. They were accepted for advertisement, but I do not think they have actually been registered. I think think there are obvious objections to registering phrases. You will have no end of difficulty.

2881. (*Earl of Crawford.*) There is the "Old Judge" tobacco?—That I take it is a substantive.

2882. It is a sentence?—Yes. Of course "phrase" is not a very distinct or exact term. You may have "Tally-ho," and exclamations, and all those things You may have quotations from the Bible, and from Shakespeare, and so on. I think by some such scheme as you would get a very large number of words that I submit would be very useful. Perhaps I might run through two or three of the points. I thought if this Committee, having gone over the matter, even apart from legislation, might deliver some opinion as to what were the considerations which have to be taken account of in applying the test of the resemblance, a great deal of help might be given to the work, and possibly to the courts of law, as to whether it is not, as Mr. Bailey contended, and as I have always thought the cases supported, that the idea of the mark is the real test, of course, always keeping in view that the mark is honestly used. The second submission I should make would be that the Committee might pronounce, for the guidance of the Board of Trade, some opinion as to what "superintendence and direction" means in section 82, sub-section (3). They might express an opinion that the words, "shall "act under the superintendence and direction of the "Board of Trade," mean the auditing and checking his general administrative work, seeing that the office was open at proper hours, and with the proper staff, but that it should not apply to those acts of discretion which are specially provided for by the Comptroller in the other parts of the Act. Thirdly, as to the question of appeals. There has been evidence by Mr. Hughes, since your Lordship asked me about this, and, of course, if the law officers could give us the help we want it would be a most admirable tribunal. I should certainly think it was desirable to give the appeal against the acceptance of a mark. I should submit that for the most earnest consideration of the Committee, as well as against the refusal of the mark, and that would necessarily increase the amount of appeals. Supposing the law officers were not willing to undertake that duty, I should urge, fourthly, that if the appeal continues to the Board of Trade, working as I think it did very well in 1884, it should be to a definite officer of the Board of Trade, either to the solicitor or to one of the law clerks. I venture to dissent from several of Mr. Murton's opinions upon these cases, but he is a very able man, and he went into the work, and I think if he was made definitely responsible for the appeal, we should have things in a much more satisfactory state than they are at present. Then, fifthly, I would specially ask the attention of the Committee to this, that proceedings in which the Comptroller is a party should be carried on as they were under the Commissioners of Patents, under the direction of the Comptroller. At present the proceedings, to which the Comptroller is a party, are conducted very often without any consultation with him at all.

2883. (*Chairman.*) By the Board of Trade?—By the Board of Trade. Then that question that was raised in the normal case might be worth the Committee considering; whether the construction given to section 90 should not be, in case of legislation, repealed. The Court of Appeal have decided that the parties have no right to go to the court about trade marks without the permission of the Board of Trade, and that has been a good deal commented on. The seventh suggestion would be a new definition of words, such as I have suggested at 2865. Eighthly, I would suggest the exclusion of words as trade marks by themselves in regard to non-pile cotton piece goods. I do not know whether Mr. Hutton would approve of its being limited to non-pile cotton goods. I believe the Manchester Chamber of Commerce wanted to exclude them for velveteens as well. Ninthly, the abolition of any theory that there is no fundamental distinction as regards brands and other trade marks. Then, tenthly, as regards section 63, I think instead of the present wording, it might be enacted that if the applicant neglects for two months to prosecute an application, his application shall be deemed to be abandoned. The present section is very difficult to work.

2884. (*Baron Henry de Worms.*) How long has he now?—The application lapses if it is not proceeded with by his default during 12 months, but how those 12 months are to be reckoned, from what stage, and so on, is not at all clear.

2885. If he makes an application for a trade mark in the first instance, and then does not go on with it, he can leave it open for 12 months?—Yes, which is too long.

2886. And nobody can register that trade mark pending the decision?—That is so. A man may enter his application and take no other step for 12 months, and then he bars everybody else.

2887. (*Mr. Mundella.*) To how long would you limit him?—Two months.

2888. (*Mr. Hutton.*) That is simply his own default?—Yes. If he gets a notice from the Comptroller to say that the Comptroller could proceed on his sending in the advertisement form if he does not answer that within two months the application should fall through. The eleventh point I would submit, is wherever the distinction of goods is made in the class it should only be on evidence by declaration as to the existence of a separate business. It has been urged sometimes at hearings that the procedure is not sufficiently settled.

2889. (*Chairman.*) I do not quite understand that point?—It is that question which your Lordship discussed with reference to the division of goods in Class 24 about velveteens. There there was abundant evidence, a number of affidavits showing that there was a separate business carried on in pile goods as distinct from shirtings and so forth; but it is frequently a question raised hastily; for instance, I may mention illuminating oils. There was a very strong effort made to induce the Comptroller to register a mark for illuminating oils similar to a mark already registered for heating oils. On going into the question he found it was impossible to treat the businesses separately, as they ran into each other so much. It should be understood that no mark similar to another mark in the class will be registered on the ground of it being for a special class of goods, special description of goods unless on evidence on declaration. The twelfth point would be that on renewing marks when the renewal clauses come into operation, power should be given to limit the mark to particular goods on evidence that it was only used for certain goods. At present, I fancy, under the renewal clauses, the owner of a mark for 14 years would have a right, on paying the fee, to register for all the goods he originally claimed. Very often we know as a matter of fact that no such user actually has taken place, and I submit whether it might not be wise to empower the Comptroller to raise that question. Another point, No. 13, suggested by Mr. Johnson would be to give the Comptroller authority, on evidence on declaration, that a mark was not used for two years on a separate description of goods, though it was within the claim to put the registered owner on proof. As a matter of fact, a great many marks are not applied to anything like the extent of the class. Then, No. 14, as regards fees. Supposing it were thought right to recast the fees, I would suggest retaining the present 5*s*. fee for the single device for one description of goods, 10*s*. for a label or for a word, because the origin and meaning of words will always be much more troublesome to the office to investigate. Of course the actual search to find the identical word is lighter than in a device. There might be a still

Mr. J. L. Whittle.

15 June 1887.

larger fee, 10*s.* or 1*l.* where the registration is for the whole class.

2890. (*Mr. Hutton.*) How would it be to have a small annual fee for the maintenance of registration?—I think that would get rid of a great many defective registrations, registrations which are not supported by real user.

2891. Where they are not in use they drop?—Yes, it is a question well worth considering. As regards designs fees I would call attention to the exceedingly small fee in the principal class as regards the number of registrations. Of the 24,000 registered designs about 18,000 come into the print class and their registration is only 1*s.* each. That is, of course, an utterly inadequate contribution to the cost. When the question of design registration was discussed in the Chamber of Commerce of Manchester they expressed their content to go for a much higher fee if something like a security could be given, and that practically is given to a certain extent now. There is a search before registration of designs. A similar design is objected to. So that really the office is doing a great deal of the work which was originally suggested, but there has been no increase of fee. I recollect Mr. Lord, who was then President of the Chamber, saying that the trade would gladly pay 5*s.*, and if some fee of that kind could be imposed it would put things on a more rational basis. At present the staff is much too small and there is very little surplus.

2892. Is not there an extra fee for every shade of colour which is used in that design?—The effect of the colour and the design is a matter for the applicant's own consideration. We always advise him to register separate combinations of colour.

2893. Is it not customary to register every combination of colour?—I think many great firms do but some do not.

2894. Practically it comes to this, the design registered pays a larger fee than 1*s.*?—I do not know whether the different arrangement of colour would not be a different design.

2895. Reversing the order of the colours, printing the same colours only reversing the arrangement?—Yes.

2896. Have you any return of the account of fees paid for registration of designs in that section?—In those particular sections, yes. I do not know that I have it with me but they are given in the Comptroller's report for the last year. I see the fees for printed designs were 696*l.* 10*s.* in the year 1885.

2897. That means 13,930 designs?—Yes.

2898. That would include all the separate colourings of the designs?—Yes. That was out of a total of 20,000 registrations and the total income was 3,900*l.* So that there was more than 3,000*l.* income from this much smaller number, about 7,000, whilst the labour is much greater as regards print, and the sorting and the arrangement of them.

2899. That is done entirely in London, is it not?—Yes. That is all I feel justified in troubling your Lordship with.

The witness withdrew.

Mr. H. R. Lack

15 June 1887.

Mr. HENRY READER LACK called in and examined.

2900. (*Chairman.*) You have read the evidence which has been given by the different witnesses who have been examined before this Committee?—Yes.

2901. I think it may be convenient first to ask you to deal with the evidence that has been given with reference to the marks in the cotton classes?—I do not think there is any point with regard to Class 23 (yarns and threads). With regard to Class 24 there are several points. The first point is with reference to devices. I do not know whether the Committee wish me to go over the long discussions with regard to Mr. Bailey's evidence.

2902. You mean with regard to the complaints?—With regard to our accepting similar and varying marks, and the practice of the office.

2903. And of variations in the practice of the office at different times?—Yes, that I admit has existed no doubt. With regard to words and letters we have not accepted them, as a rule, since the commencement. One heading was registered by mistake, a line heading; it was not discovered until after it was registered, and as I have no power to touch the register after a mark has once been put upon it, it could not be disclaimed.

2904. As regards headings, do you think it would be practicable to register them if you made colour a part of the registration?—Yes, I think it is practicable because it was done in 1879. I could show your Lordship a volume. The plan on which they went was to take the centre line and then to count the different coloured lines on either side. It might be a yellow centre with a green on either side. Then two greens, three greens, and so on; and then begin with a red centre and varying colours.

2905. If you registered only such differences as those would not the headings very soon be exhausted?—Yes. It is possible to classify them, but not for any useful purpose, I think. The Committee, after they classified them, found that they ran so much into one another that they could not say that they were distinctive marks in themselves.

2906. A good deal depends on the width as well as the colours and distribution?—Yes; and brightness of colour and shade.

2907. (*Mr. Hutton.*) I think the witnesses expressed the desire that the effect produced on the sight should be registered. Do you see how that is practicable?—No, I do not. Of course it is more a question for an expert than for myself.

2908. I think all the gentlemen who have been examined said they should prefer leaving it to the Comptroller and the Board of Trade?—It would have to be worked by experts if they did, of course.

2909. They could not define it exactly, but they said it was the effect?—Yes.

2910. Do you see any mode practically of doing it. All the manufacturers seem to express the desire that it should be done if it is possible?—Yes; it is the manufacturers' mark.

2911. You do not see any mode of practically dealing with it?—No, I do not think so. We have always accepted distinctive headings since the passing of the Act; chiefly printed headings, not line headings.

2912. A printed heading with a special distinctive design would be registered?—Yes; we have taken those.

2913. (*Chairman.*) The next point is cautions?—I do not think that any notice ought to be taken of such a matter. Supposing a person does not register a caution there is nothing to prevent a man stamping a caution under the registered mark. I do not think any notice ought to be taken of ordinary letterpress or bale marks.

2914. I do not know whether you deal with it elsewhere, but there was a suggestion made that where consent was given it should appear on the face of the mark; what do you say to that?—The only difficulty in connexion with that is the provision as to not entering any trust on the register.

2915. I am not talking of the existing law; but, supposing we amend the law, do you see any objection to registering consent?—No, I do not see any. It does not amount to more than registering an assignment of a part of a property.

2916. Or consent to particular markets?—Yes.

2917. Of course it would not affect the rights of the parties, but it would afford on the face of it evidence of what agreement they had made?—Yes.

2918. Then what do you say as to Class 25?—There are two other points, I do not know whether it is necessary to refer to them, in Mr. Bailey's evidence, in which he states that it was not the practice of Manchester to regard one mark as blocking all marks. I think that has been put before the Committee. I have a volume of the B. list in which I could show you numerous varieties of single human figures. The next point was with reference to Mr. Bailey's observation that we took thousands of such marks (No. 645). It is scarcely worth noticing. It is rather an exaggerated statement because we have not thousands of marks altogether. Then there have been some representations by Mr. Starey with reference to the non-advertisement of cotton marks. I think the Committee have had that placed before them. The Manchester trade were relieved from that advertisement on account of the great expense which it was stated it would entail on the cotton trade.

2919. It was their own desire?—Yes; one reason why it was done was that the cotton trade being chiefly confined to Manchester, the advertisement in the Exchange was considered to be sufficient notice for the trade.

2920. (*Mr. Hutton.*) With regard to class 24 there was the sub-division of the class?—A separate division for pile goods.

2921. Yes?—In the new Act I took power to give more than one similar mark to different goods in the class; and when the Act came into operation velveteen goods, which made a great start after the Louis velveteen, came with a new sort of ticket, very pretty tickets, and they asked to be allowed to register and I did not see how I could refuse them in the face of that section of the Act. They had a right to be registered.

2922. Under 24?—Yes; it recognised different sub-divisions of goods in the class. That opens a question as to the decision of the Committee of Experts, to which the Commissioners of Patents agreed in 1876, whether the class should remain as it does now, merely piece goods of all kinds.

2923. Under the Act you could not sub-divide it?—We can under the new Act but could not under the previous Act; under the Act of 1875. That Act and Rules limited it to one class, but I found as the time went on that it was necessary to provide for additional marks in the class, and that was only possible by registering the same mark for different descriptions of goods in the same class or making a new classification.

2924. (*Chairman.*) I do not know whether you deal elsewhere with the question of the further sub-division of the class?—Yes.

2925. The next point is the headings. Have you anything further to say about that?—No, I do not think so. I have not had time to read the last evidence the other day. In Class 25 I think there are no objections.

2926. Then we come to the suggestions or complaints made with reference to marks other than the marks in the cotton classes?—I have arranged those with reference to the sections of the Act. I thought, perhaps, it would be convenient. I will begin with the trade mark portion. The first is with regard to section 62, subsection 1. It is suggested that applications by persons trading as firms should be accepted under the firm name.

2927. Before that there is "applicants out of the "jurisdiction of the English courts"?—Yes; to give addresses for service in the United Kingdom. I see no objection to that. We have power under Patent Rule 9 to require it in the case of patents.

2928. The next is that applications for persons trading as firms should be accepted under the firm name?—Of course that would save the subsequent assignment fees, because whenever a firm changes partners now they have to re-register if they wish to keep the title clear, and it would be unnecessary if the name of the firm were registered, "Jones and Company" would always go on.

2929. Do you see any objection to that?—No; it would be a loss of fees to the office.

2930. It would seem a reasonable thing?—Yes.

2931. (*Mr. Hutton.*) If there is a change in the name of the firm it would require an addition or withdrawal?—Yes. I think it would be a useful change in subsection 3 to alter the word "class" in line three to "descriptions," because this would enable the Comptroller to prevent persons claiming for the whole class when unnecessary. That is a recommendation of Mr. Johnson's. Then we come to section 4, which raises this point. The Comptroller may, if he thinks fit, refuse to register, and such refusal shall be subject to appeal to the Board of Trade. That first refusal, I think, is very useful, that the Comptroller should have power to refuse on the ground that it is not a trade mark, that it is something else, a design.

2932. (*Chairman.*) I observe in your memorandum you say there are four grounds on which the Comptroller may refuse. Are those grounds determined by the statute, or by rules, or by practice?—By practice. The first is I refuse on the ground that it is not a trade mark; it may be a printed circular. The second is under section 64, that it is not a trade mark within the definition of the Act; the third is under section 72, that it is a trade mark which interferes with some trade mark already on the register; and the fourth is under sections 73 and 86, that it is a word which is not lawful to be registered or contrary to morality and public order.

2933. It is all impliedly provided for by the Act?—Yes. The first I think is a useful provision. That exists in most cases. As regards the second of course that depends upon whether the committee consider it desirable that the Government should still control the acceptance and registration of trade marks.

2934. You mean whether the suggestion should be acceded to that anybody should be allowed to register what he pleases, taking his chance of it being good or bad?—Yes. Of course if the definition of a trade mark were extended the office would have less trouble in controlling what was deposited.

2935. There does not seem anything like a general concensus of opinion in favour of the change?—No, but there is a great feeling in favour of an extension of the existing definition. The great difficulty in working this, as I point out, is the existence of the words distinctive features, distinctive heading, distinctive mark, and a fancy word. The difficulty lies in interpreting those words.

2936. You can hardly take out "distinctive," can you?—What we reject as not being distinctive are marks which are quite good enough for trade purposes. That is the difficulty. I say, for example, this label is not a distinctive label. It is on the border line, but nevertheless the applicant continues to use that label. It is quite good enough for trade purposes.

2937. Are you speaking of a label which resembles some other registered label?—No, of a new label.

2938. Give us an instance of what you mean by a label which is distinct from anything hitherto registered, but still is not distinctive?—(*Producing several labels.*) Those have been refused. These marks which have been refused have a protection under the Merchandise Marks Act; but if the new Merchandise Marks Act says that only registered marks shall be entitled to protection in future, these people will have no protection to their marks at all, neither under the ordinary common law or under the criminal law.

2939. Still it would be better, one would think, to leave them with protection under the Merchandise Marks Act than to register them?—Yes, I do not think there would be any objection to that, but they would feel it a great hardship if they were deprived of every protection.

2940. The two things are surely quite distinct. A trade mark which the man is to use as an indication that the goods are his own, and to which he gets a right, because it is something distinctive, and for which he gets the special protection which the trade mark gives him. That is surely something quite

Mr. H. R. Lack.

15 June 1887.

distinct from the right which every man has to prevent his neighbour or competitor in trade doing an act intentionally for the purpose of deceiving persons who are customers in the trade into the belief that goods are someone else's when they are really his?—Yes.

2941. (*Mr. Mundella.*) This is not a registered mark of Curtis and Harvey, but the goods are made up in the same form?—Yes.

2942. The labelling and the whole appearance of the goods is such a complete imitation of Curtis and Harvey's article that the ignorant public, especially abroad, believe that they are Curtis and Harvey's goods that they are buying?—Yes.

2943. (*Baron Henry de Worms.*) You could not, under the existing law, refuse to register a mark merely on the ground of combined similarity unless there was an actual portion of that mark that was a piracy of that which had been registered?—No, it must be a leading feature; if it is a trade mark it must be the object itself.

2944. I think that case of the Queen and the horse's head came before you. The former was registered. Then in the second case the colour and everthing else was the same. The general similarity of those two parts would not entitle you to refuse to register the second one?—No, I should say not, because that is the leading characteristic of the mark. In the same way in a landscape, I should be guided by the prominent features of the landscape and not by insects or things about in the grass.

2945. (*Chairman.*) Although each of those as trade marks, the Sovereign in the one case and the horse in the other, might properly be registered, and, therefore, separately protected, yet would you consider that it might be desirable to render it penal to use either of those marks in combination with other things stamped upon the goods in such a way as to deceive purchasers into the belief that they were the goods of a rival manufacturer?—Yes, I think so.

2946. The two seem different matters?—Yes, I do not think anybody has a right to do anything to deceive another person. Under the old law they used to do that with designs; they got up designs which were the same in colour and in effect although the elements were different. As the old law stood the courts were unable to interfere; unless the design itself was identical, they could not interfere. Your Lordship may recollect some words were added in the Act of 1883 to apply to colourable imitations.

2947. And the courts have interfered in such cases?—Yes. With regard to the evidence I made a note. Mr. Boyle suggested that the office should register without examination. Mr. Imray proposed that the office should only examine as to formalities. Mr. Clark approves of examination. Mr. Clark says applicants should give a description of claim. That, I think, is very undesirable. If you were to read the descriptions of the marks in the American Journal you would find that they were no use at all, for this reason: A description of a single article is unnecessary, such as "My trade mark consists of a representation of a "watch or of a dog," but if you go beyond that it is impossible from the description to work out the trade mark. If you asked three people or half a dozen people to write a description of a complicated mark you would have half-a-dozen differing descriptions. We found that out in the beginning and gave it up. It is of no practical use where you have complicated marks, because applicants do not describe the important features in the proper way.

2948. What have you to say with reference to appeals to the Board of Trade?—With reference to appeals to the Board of Trade there seems to be a very general expression of opinion, that it would be better to remove it from the Board of Trade. Mr. Cutler is the only one who approves. Mr. Starey, Mr. Imray, and Mr. Johnson propose that appeals to the Board of Trade should be abolished.

2949. I think some of those witnesses were disposed to think that these objections would be a good deal met if the practice which we were told was the earlier practice were reverted to, that if the Board of Trade saw reason to differ from the Patent Office they should interfere, but if on looking at the papers their impression was the same as that of the Patent Office they should at once refer the matter to the court?—Yes, I think that would meet a great many of the objections. There is one point I should like to mention. If the public were allowed to deposit the marks without any examination it would necessitate the preparation of illustrated indexes, and even then we could never keep the information up to date, because it would take at least a week to print the journal, and the public would always be behindhand. Now they have the information at the office. No doubt it would be a great convenience to the office if we had nothing to do but to register as under the old Designs Act.

2950. (*Mr. Hutton.*) Do you see any objection to the recommendation made by the Manchester Chamber of Commerce that any appeal should be made to the Palatine Court?—No, I think it would be very desirable.

2951. I think the views of the Manchester office were in favour of retaining the appeal to the Board of Trade in the first instance?—Yes, they wished to have an appeal to the Board of Trade against the decision of the Comptroller also, which, I think, would be very useful.

2952. That is to retain the present system?—Yes.

2953. I think also they wanted that, in case of objection made by a holder of a registered mark, he should be heard on that appeal?—Yes.

2954. At the present time he is not heard; he has no *locus standi*?—I think that is an objection to all the hearings, that I only hear the applicant at the present time, and of course I am not able to put before the applicant all the views of the registered owner.

2955. (*Chairman.*) At present there is no appeal to the Board of Trade against the registration, where the Comptroller registers?—No.

2956. It is only if he refuses?—If the Comptroller refuses. He is bound to give the applicant a hearing, and that is done without consultation with the registered owner if it is refused on the ground of its being a similar mark, whereas if the registered owner could appear he would be able to put before the Comptroller a great deal of information which might assist him in coming to a decision.

2957. You think it desirable to introduce an appeal to the Board of Trade from the registration as well as from the refusal to register?—I think that is what is intended.

2958. (*Mr. Hutton.*) Do you see any objection to the Board of Trade being required to serve notice on the owner of a registered mark where the applicant brings in a mark which appears to clash with that registered mark?—I should think it could be done by rule, could it not; the Board of trade could make a rule that where the Comptroller refused a mark he might hear both parties, that would answer the same purpose.

2959. (*Chairman.*) No, I am not quite sure of it. Sub-section 4, section 62, says, "who shall, if re- "quired, hear the applicant and the Comptroller." It rather seems to point to only the applicant and the Comptroller being heard?—Section 94 is only "where "any discretionary power is by this Act given to the "Comptroller, he shall not exercise that power ad- "versely to the applicant for a patent without giving "the applicant an opportunity of being heard." Would that prevent hearing the registered owner?

2960. I think you have an amendment to suggest in section 63?—It is only the substitution of "may" for "shall." I think that would be an improvement; instead of that the application shall be deemed, that it may be deemed to be abandoned.

2961. "May," at whose option?—The Comptroller's, that is to say, substituting "may" for "shall" in the fifth line, providing rules for notice on expiration of term being given to applicant. It would give

little trouble and it would be useful to applicants; instead of removing them without any notice, to give notice that unless they went on within two or three months their mark would be removed.

2962. Then as to section 64, what have you to say? —The first question there is as to adding the name of an individual or firm in the possessive case. That is a point which has been brought before the notice of the Committee. That is a very old form of mark. "Oldridge's Balm of Columbia," "Burgess's Essence "of Shrimps." It is very much used. I consulted the law officer, and he directed me that I might continue to register such form of marks.

2963. Was not what was in question there the name of the firm or individual in the possessive case coupled with some descriptive epithet, not merely the name of the goods he dealt in?—Merely the name. Burgess's Essence of Shrimps, in letterpress, of course.

2964. I thought there were some cases given us of words that had been refused by themselves, but which were admitted coupled with the name of the person in the possessive case?—That is a copy of the case and opinion of the law officer (*handing same to the Committee*).

2965. I think we have seen that, I am referring to the action which was taken upon that with regard to words like "excellent" and "superfine"?—Those, I admit, ought not to have been taken.

2966. They were taken when the name of the firm in the possessive case was put before them?—I think there was one case "Roger's best," which ought not to have been taken; that was a mistake. I did not see it till it was in the evidence.

2967. You mean only the name of an individual in the possessive case, but surely there would be a difficulty about that. Take a common name, we will say Burgess, it is a well-known name in connexion with pickles. Take Smith, for example. Would you allow a man to register Smith's tobacco and then not allow any Mr. Smith to call his tobacco by his own name afterwards?—Of course your Lordship knows the decision in the Burgess case. They would not allow the son to use "Burgess's Essence of Shrimps"; he was obliged to put his initials to it.

2968. That was because there had been the possession of a good will, which passed to one member of the family. You register indifferently, whether the goods have a reputation or whether the goods are being sold for the first time?—Yes.

2969. You could hardly allow any individual, if his name were at all a common one, to be the only one to call any particular class of goods by a common name? —Well, that is the way they wish to use it usually. Those marks, such as "Oldridge's Balm of Columbia," are the very marks which are most valuable in trade; a device would be no use, and so with all those proprietary articles.

2970. (*Mr. Hutton.*) Do you keep a register of all the marks refused?—No, I do not of the refused marks. We have all the names accepted. We have a register of every application. We can find it out in that way. The marks are first placed on the application register, and those which fall through do not go on to the register.

2971. (*Chairman.*) You gave an instance of a new manufacture which a man calls Balm of Columbia, which may not be so objectionable; but you might have Smith's Soap?—Yes, certainly.

2972. Surely you could not allow "Smith," put in the possessive case, to have the right of calling his soap "Smith's Soap," though a dozen other Smiths might make it?—Yes; it has been held that a man who uses his name in the possessive, such as "Carter's" and "Sutton's," should be protected.

2973. They are protected when they have gained such a reputation in connexion with their goods as that it is a known thing in the market, and somebody else seeks to induce the public to believe that his goods are theirs, but surely that is a different thing from registering it as a trade mark?—Take, for instance, Carter's Cologne Oil, that is a taking title, and that is the only valuable part of the mark.

2974. Surely it is very open to question whether such marks ought to be allowed?—I am only placing before the Committee what people tell me.

2975. The difficulty seems to be this: no doubt many cases may be cited where such marks would be wholly unobjectionable, but how are you to distinguish between such cases as those and cases where a man would claim a monopoly of the sale of common manufactured goods under a common trading name? —It is stated in Sebastian's book that if you unfortunately have the name of Green, or Smith, or Brown you have a very weak mark.

2976. Ought you to have the mark at all; ought you to prevent any other person of the name of Green or Brown from selling goods under their name?—No.

2977. (*Mr. Mundella.*) You cannot, can you, because there is a case now of Rogers, of Sheffield, who are celebrated for cutlery, they have rivals in the shape of another firm who have got a man who really has the name of Rogers and they give him some trifling interest?—They baptise children on purpose to maintain the name "Jean Marie Farina;" there are so many christened every year in order to keep up the supply.

2978. (*Mr. Hutton.*) Is their mark registered?— Yes, there are many Farinas.

2979. In this country?—Yes, all of them.

2980. (*Chairman.*) Have you anything to say about sub-section B. of section 64?—No.

2981. Sub-section C. is, of course, the one which has given rise to the difficulty, as to the use of the word "distinctive" and the word "fancy?"—I have given your Lordship a table of the proposed definitions, Mr. Johnson's, Mr. Starey's, Mr. Imray's, Mr. Justice's, Mr. Clark's, and Mr. Cutler's.

2982. You have not been bold enough to prepare one yourself?—Yes, I propose a little further on to take out the word "distinctive," and to leave subsection C. to read: "A device, mark, brand, heading, "label, ticket, or word or words in common use," to which might be added, "provided that the following "are incapable of registration; words in common use, "geographical words, except as addresses, descriptive "or other words ordinarily used in connexion with "goods, to which proposed to be applied," and then phrases, mottoes, and proverbs.

2983. If you put that, that would compel you to register all such devices as you have just shown us are refused, would it not?—Not entirely. Some of those I could refuse on the ground that they were not trade marks at all.

2984. Some of them were refused on the ground that they were not "distinctive?"—Yes.

2985. Surely they were properly refused?—That is a question whether you would protect such marks or not. It seems to me, if you have these marks in the market, whether I register or not is of very little consequence, they will circulate whether I register or not.

2986. By registering a mark you give the man at once the right of stopping other people from putting on the same thing, and if the mark is a mark that is in no way distinctive, and which any other man might innocently adopt; adopting such a common device as a crown, for example, could you let one man register a crown and nobody else put a crown on any of his labels afterwards?—The difficulty is to interpret where distinctiveness begins; where is the border line? It is like "fancy." The courts have not been able to agree really as to what is fancy and what is not, and if the courts are unable, I do not feel myself in a position to decide; I do not think any one person would be able to do so. Mr. Clark says, "A word "mark which is not indicative at all is perfectly "useless."

2987. Do you think that is so? Are there not many word marks that you see every day, some of the best known, that have no meaning to them? They may possibly have a meaning if you work out the

Mr. H. R. Lack.
15 June 1887.

etymology, because they are a compound of Greek or Latin, or the two combined, the meaning of which a scholar might puzzle out, but to people who see them and who associate the goods with them they have no meaning?—Would your Lordship think that "Dentifrice" originally would have been a good mark. Suppose you take Pantoline, that is not really descriptive, but it contains a sort of hidden meaning.

2988. There is surely a great difference between a word that is descriptive of the quality or character of the article used, and a word which is a fancy word, but which points in some way or other to the kind of article, or the character of the goods to which it is applied. Whatever your fancy word is, beginning with the word dent, it has something to do with teeth?—Yes. Of course a purely descriptive word cannot be protected. If I register it it has no protection. That is the law. These are the words which we refuse now. We should probably refuse dentoline on account of its being purely descriptive, and having such words as dentifrice in the dictionary.

2989. "Dentoline" is not descriptive surely?—There is one word, "Bovril," that is a good trade mark, although "Bovine" is a dictionary word.

2990. As applied to what class of goods?—It is for an extract of meat. It is not registered. I think by leaving out the word "fancy" such words as those would be accepted, but the courts would probably refuse those as the Act stands with the word "fancy" in it.

2991. Do you think the registration of phrases is objectionable, provided it is not a phrase descriptive of quality, character, or place of origin?—It is so difficult to say where you are to end. You might have a short phrase like a motto or a proverb, but if you once open the door they would bring in all sorts of things.

2992. At present would you allow them?—Not as a fancy word. There is a difficulty about that, because it says "a fancy word or words." Two words would make a phrase. "Wide-awake" would not be considered a fancy word.

2993. Then you have something to say about brands?—With regard to those old cigar marks which are burnt in the ends of cigar boxes, the late Master of the Rolls held that they could not be registered under the definition of the Act of 1875, and it was to meet the case of those marks that we put in the word "brand" in the Act of 1883. It was intended to allow those old cigar marks to be registered. That was the reason, but there is very little difference.

2994. (*Baron Henry de Worms.*) Are they registered?—Messrs. Lumley registered several of them, I think. There is an association for the protection of the Havannah marks.

2995. Taking the case of an English cigar made in London, would the maker of that register a particular brand as a trade mark?—Yes.

2996. (*Chairman.*) We were told you only registered brands in connexion with tin-plate goods?—And cigars too. It was put in really to meet that difficulty.

2997. We were told so, but I suppose that was a mistake?—Yes.

2998. (*Baron Henry de Worms.*) When you register those brands on boxes, would you register for instance the name of "Cabana" for cigars?—We should register any name provided it did not appear to be deceptive. For instance, in the beginning we had an application from Houndsditch in Spanish, "Juan Blanco Habana"; but he unfortunately put in his description, "Havannah cigars of British manufacture," and the late Master of the Rolls stopped him at once. If he had not done that we should have registered. If he had claimed Havannah cigars I have no power to go beyond the description or the documents lodged in the office. But I think the majority of the English tobacco marks come by way of a brand, such as "La Tuberosa," or something of that sort, or with the representation of a girl with a name.

2999–3002. A person charged with fraud under this new Bill for putting the word "Havannah," which would be a false indication, upon cigars, might say "Yes"; but this "Havannah" was registered by the Trade Marks Office. Is not that so?—Yes; if it were so.

Adjourned to Saturday, June 18th, at 11 o'clock.

Board of Trade.

Saturday, June 18th, 1887.

PRESENT:

LORD HERSCHELL.	LORD MACNAGHTEN.
EARL OF CRAWFORD.	MR. HUTTON.

LORD HERSCHELL IN THE CHAIR.

Mr. HENRY READER LACK re-called, further examined.

Mr. H. R. Lack.
18 June 1887.

3003. (*Chairman.*) I forget the point we were on?—We were on section 64.

3004. Had we finished that?—I think not. You were considering the different points. It is one of the most important sections in the Act. I do not know whether your Lordship looked at the table containing the different proposals of Mr. Johnson and other witnesses. They propose to retain the "distinctive device" and "mark" as it stands, and to insert some fresh definition as regards "word." They seem generally to wish to be allowed to use partly descriptive marks. Your Lordship will see Mr. Clark says: A word mark which is not indicative at all is perfectly useless, "that is to say, words that are not ordinarily "descriptive but which they may draw up, such as "Chlorodont."

3005. I think it is hardly that they wanted to use words which were descriptive, but they wanted to be allowed to use invented words with some relation to the subject matter that was being dealt with in the trade?—Yes.

3006. That if the subject matter were something connected with the teeth they should be allowed to use some word in which "dent" or "dont" should form a part?—We have had a great deal of trouble with new words which come very near dictionary words. It is true the words are not in the dictionary, but may be suggestive, or partly suggestive, and we have refused those words up to the present time. That has given a great deal of trouble, and of course it is very unsatisfactory to applicants, because when they once set their minds on a mark they pro-

bably, before they come to me, have spent many pounds in advertising.

3007. But why were they not fancy words if they were words which had no existence before, but were invented by the person who was seeking to register? —Because many similar words, or almost identical words, being in the dictionary we looked upon them as dictionary words.

3008. I could conceive their being so near a dictionary word as to be calculated to mislead people into thinking they were the same, but it would rather strike one that if it was not so near as that it would be a very good fancy word?—I must say that the majority of the marks are very weak.

3009. Those that were stated to us as the kind of marks desired were not descriptive things, but through their quality or through their use they simply had some connexion or relation to the subject matter?—Well they apply for "Ozo" for "Ozone," "Carbo," and many similar abbreviations.

3010. (*Lord Macnaghten.*) What do you do when a word of that sort is offered to you for registration? —It is a most difficult thing to know what to do.

3011. What sort of process do you go through?—I have suspended some that I thought might possibly be accepted.

3012. (*Chairman.*) Take, for example, "Ozostime," the idea being of stimulating by means of ozone. That would be a fancy word although the idea suggested is stimulating by ozone?—Yes. Looking at these words we ought not to go into the derivation too much, because the public are supposed not to know all the languages.

3013. (*Earl of Crawford.*) But I see you object to a word which might possibly be nonsense, but which turns out to be in Chinese or Burmese something particular?—Of course, where we are dealing with foreign words the only way in which we can be sure is to treat them as if they were English. They ought to be fanciful in their own language. At present I require a translation when I do not know what the word is, because in Spanish, for example, you get a word which looks very fanciful, but it means really an ordinary English word. "Corazon" (heart) is a very fanciful word, but many people would not know what it meant. We have had a difficulty there, but it seems to me the only way is, as I have to take words in all languages, that I must require the word to be a fancy word in the language in which it comes.

3014. (*Lord Macnaghten.*) Do you apply that to dead languages, such as Greek and Latin?—Yes.

3015. (*Chairman.*) Greek it would not apply to, because it may be modern Greek?—Yes, but I mean ancient Greek. Latin and Greek words we should take as fancy words, but modern Greek we should not.

3016. You would have to inquire, because as regards the Greek, there is very much of the ancient Greek that is modern Greek?—Yes.

3017. (*Lord Macnaghten.*) An Irish word you would take?—We should have to inquire what it was. It is most difficult to know what to do, the range is so vast.

3018. (*Chairman.*) What is the next point?—The geographical words I wish to draw attention to. There are two trades, the tin plate trade and the whiskey trade, which have been using word marks for many many years, and if geographical marks were not allowed they would have to alter their customs. The tin plate brands have nearly always been the names of places.

3019. Do you see any objection to the use of a geographical name which is not the name either of a town or a manufacturing district?—I think owing to the vast extension of trade it would be safer not to have any geographical names at all.

3020. (*Mr. Hutton.*) On no article?—No, except as addresses.

3021. (*Chairman.*) Why should not the names of mountains be allowed?—Yes they might be. The Scotch people might change their "Glens" into "Bens."

3022. But if it is even a glen, if it is not a manufacturing district, what harm does it do?—The only argument is that it may become a town.

3023. But supposing it does become a town nobody would infringe the trade mark by using the name of that as part of his address?—No.

3024. And therefore a man who owns the trade mark runs the risk of its value being diminished by its becoming a manufacturing place from which people might date their communications, or the name of the place of manufacture which they might use in connexion with their goods. On the other hand, a person who manufactures there has a perfect right to use his address for all ordinary purposes, but he has not a right to use it as a trade mark?—No.

3025. It does not strike me that there is any very serious difficulty if you exclude towns or existing manufacturing districts?—We thought the other day that Timbuctoo would be an out of the way name, but for mats it indicates the source of origin. There are Timbuctoo mats which are brought into this market. You may have guano from Socotra.

3026. You must clearly exclude the use of any geographical word which appears to be intended to describe the place of origin?—Yes.

3027. (*Earl of Crawford.*) Take Glenlivat whiskey. Is that the place of origin, or is it merely a generic term?—Glenlivat was the first of all.

3028. It started there?—It started there.

3029. In the same way as Balbriggan hose?—Yes, and from its reputation it has induced other manufactures to follow in the same line.

3030. (*Mr. Hutton.*) Is the whiskey manufactured at Glenlivat?—I believe so.

3031. It is just the same as Ben Nevis and Glen Nevis. There are two manufactories, one at Ben Nevis and one at Glen Nevis?—The question is as to geographical terms. Of course a descriptive word or a deceptive word would not be allowed. Nobody would ask for those.

3032. What do you call deceptive?—"Oil-less carbonate" when it is not oil-less carbonate. There was also the case of the Anglo-Portugo oysters; that was decided to be a deceptive term, because they were not partly English and partly Portugese. The Master of the Rolls said they could not have that term because it was deceptive.

3033. (*Earl of Crawford.*) Where was it that they wholly came from; they came from Ostend, I suppose?—I believe they were entirely English.

3034. Was not it because they were sold by an Anglo-Portugo company?—No, that was the name of the oyster. We do not register companies.

3035. Can you have a trade mark for a natural product?—Yes, such as coal.

3036. There is no trade mark for coal, surely?—Yes, we have some.

3037. (*Mr. Hutton.*) How do they mark it?—I do not know how they use it. It must be on the waggons or on the invoices. Some of them have marks. There are not many, but there are a few. The other point was with reference to phrases and proverbs or mottoes, whether those should be accepted.

3038. (*Chairman.*) You were suggesting the difficulty of their requiring many words. I was thinking about that. Would not that be sufficiently controlled by the inconvenience to themselves of having so long a trade mark. Do not the necessities of the case require that it should be something short in order to catch the public attention?—Yes. Mr. Johnson suggested that we should allow short phrases. Mr. Starey has objected to the use of them altogether. They are like the "Three Castle's" tobacco, and those sort of things.

3039. (*Earl of Crawford.*) The "Old Judge" tobacco?—Yes, my Lord.

3040. (*Chairman.*) Is that portrait of the judge registered?—We have several, I think. We have had another class of mark, "The Hard Seam," which

Mr. H. R. Lack.

18 June 1887.

Mr. Starey mentioned for tobacco. That is looked upon as a sort of deceptive description; it really means that it is for the use of miners.

3041. That raises the question of what has been called following the use of the mark?—No, it is a misappropriation of the use of the word.

3042. Some objection was taken to your following the use of the mark, as in the case of "Mariners' Rum"?—Yes, I do not think we ought always to follow the use of the mark. I think it would give a man a great deal to give him "Navy" for rum or "Navy" for tobacco, because it would be a splendid advertisement.

3043. It might be deceptive to a person; it would rather suggest that it was peculiarly fitted for the navy, or that there was some public use of it in the navy?—Yes.

3044. (*Mr. Hutton.*) Do Bass's register "India Pale Ale"?—Not by itself, only on the label. "India Pale Ale" is common property. They do not register it. It is merely added matter; anybody can use it. There is one point with regard to word marks; it is rather important to bear in mind that the new Merchandize Marks Bill will only allow registered marks to be protected in future, and, therefore, whatever word marks are excluded from this Act will be excluded from protection under the other Act as well.

3045. (*Chairman.*) But you see they will only allow them to be protected in the future. I should think it would have to be a matter of consideration whether it would ever do to limit the protection in that way if you want to prevent fraud?—Just so, but that is how the Bill stands.

3046. That is to say, you may protect only registered marks when they belong to a kind which may be registered, if the person using them is aggrieved, but if you were to refuse protection to marks that could not be registered, but which nevertheless would be protected by the law, in appropriate civil proceedings it might be doubted whether the Act would not fail with regard to some of its objects?—That would be so in some cases. For example, supposing a firm had a star; they will not register here because they are not compelled to register. They go on for years until they get into difficulties. Very often a merchant will make a very large business out of, say, a star on particular goods which become known as the "Star brand," and it is worth a great deal of money to him. Then supposing he comes to me, I say, "No, that is "not a registrable mark;" he has no means of obtaining protection on account of user, because user has disappeared since the 1st January 1876, and if these marks are excluded from all protection it would be very unfortunate for such people.

3047. (*Mr. Hutton.*) Suppose one man uses a star with four points, another with five points, and another with six points?—Those would be calculated to deceive.

3048. I have had a case myself of a star which was refused to be registered under the Act of 1875 for use on cloth?—Because so many people had been using stars.

3049. It was always ordered by the star?—That was a very valuable property to you.

3050. Yes, but the value was gone when they refused to register because it was imitated by somebody putting five points to the star?—The next point is what may be added to essential particulars.

3051. (*Chairman.*) At present you may add anything?—You may add anything. I do not see why you should not add anything—any ordinary letterpress.

3052. But you have to disclaim it?—I do not see why you should disclaim it, if what is added is anybody's property, such as ordinary letterpress or "Shake the bottle," or "Cautions," or things of that sort.

3053. What is the object of adding them in the registration at all?—I do not know. Why should you not leave it out; anybody can use it. It is common matter: for instance, if a man had a label, such as "Lamplough's Pyretic Saline"—that is a trade mark, but the "directions for use," and all that sort of thing, would be common.

3054. I suppose what is meant is, that the addition to the trade mark of any of these particulars shall not make it the less a trade mark?—Yes.

3055. Then would not that be the better way of dealing with it, not to make it part of the thing to be registered, but to provide that the addition to the trade mark of any letters, words, or figures, or combinations of letters, words, or figures, or any of them should in no way diminish or affect the validity or force of the trade mark registered?—Yes; it would be a label generally speaking. Mr. Johnson in his No. 18 says, "the exact status of added matter to be defined."

3056. Is not that all that it is?—Yes, that is all. At present it says that there may be added to the above words "any letters, words, figures, or combina- "tions of letters, words, or figures." Of course one knows by experience that it is usually letterpress.

3057. If the imitator imitated the device he would be liable even though he imitated nothing else, even though he had none of the added matter?—Yes.

3058. If the device was really distinct he would not be liable even though he used precisely the same added matter. I do not quite see what the advantage of registering any added matter is?—It merely seems to me to amount to allowing the ordinary letterpress to accompany essential particulars. Then it seems to me, my Lord, that that part of section 64, as to added matter, ought to be read now with the new section 74 which we put in. Section 74 gives power to provide for entry on register of common marks as additions to trade marks. It would seem that that more properly belongs to section 64.

3059. I think there is some little difficulty in reading section 74 with section 64, because section 64 provided that if you have got anything which comes under A, B, or C you may add to it practically anything?—Yes.

3060. Then section 74 provides, taking the case of a new trade mark, that any distinctive word or combination of words may be registered as an addition, because I take the words at the beginning to cover the whole, to a trade mark, though the same is common to the trade in the goods with respect to which the application is made?—I can tell your Lordship the object of inserting that provision. There are certain words which the champagne trade told us it was essential should appear on their labels, and that section was put in to meet the case of the champagne labels. With regard to new marks, we only allow a word to appear which is common to the trade. As regards devices in use before the passing of the Act, we have allowed a device to form part.

3061. I do not quite understand. I am only speaking as regards new marks, and as regards new marks under section 64, when you have once got your distinctive device you may add to it any combination of letters or words. How do you read that with section 74 subsection 1 (*b*), "Nothing in this Act shall "be construed to prevent the Comptroller entering "on the register in the prescribed manner, and "subject to the prescribed conditions as a condition "to any trade mark, any distinctive word or combina- "tion of words, though the same is common to the "trade in the goods with respect to which the appli- "cation is made"?—It would seem to be unnecessary.

3062. If you can add anything whatever, I do not quite see what there is in the Act that can be construed as preventing them adding something which is distinctive?—I think it arises in this way: under the Act of 1875 no word could be registered by itself; therefore it was provided that you might add any word to a device. In 1883 we added "fancy words" to the definition, but we did not alter that part which says that any words may be added, because "any word" would include a fancy word as well as an ordinary word.

3063. Now an applicant for "entry of any par- "ticular or particulars must disclaim in his applica- "tion any right to the exclusive use of the same, and "a copy of the disclaimer shall be entered on the "register." Do you in the case of all added words enter a disclaimer?—No.

3064. Then if a man uses a word that everybody is entitled to use, that has nothing distinctive about it, he need not disclaim; but if his added matter has something distinctive about it then he must disclaim. I do not see the purpose of that?—It ought to come out; it ought not to be there. It was put in by mistake or it was an oversight. These amendments were inserted in Committee, and that is really the reason; they got put in in a hurry. We were only 2½ days in the Committee, your Lordship will remember.

3065. (*Mr. Hutton.*) That was the Grand Committee?—That was the Grand Committee. Then Mr. Johnson said, "Provision should be made for "protection of registered owners of trade marks in "the use of their marks as a whole when portions are "omitted under the registration by order of the "Patent Office." That is a question of very doubtful practice, whether when a man brings a label we should say, "We can only register a part of this label; you "must strike out the Queen's head, or something "else," and we register only in part, while the mark, of course, is used as a whole.

3066. (*Chairman.*) Because he may use any added matter he pleases?—Yes.

3067. The added matter which he puts on in connexion with the registration does not, as far as I can see, give him any additional right, nor does it prevent him adding anything else afterwards that he pleases?—No. I do not think disclaimers are at all desirable, my Lord. It leads to great complication to disclaim a bit of this and a bit of that; but Mr. Johnson and Mr. Cutler both asked for the entry of disclaimers, and they asked that common devices and words should form part of new marks. I have always, under the directions of the Commissioners of Patents, refused to take distinctive parts of common property unless they were worked up into a new device, and I have refused to re-register, of course, what had been common. It is different as regards patents. You may have, as you know, a combination of nine parts, and if one only be new it makes a good patent. It would not do to have eight old parts of a trade mark and one small one new, and to disclaim the eight. Then as to section 65, the suggestion is merely to alter "classes" to "descriptions," which would make it agree with the other.

3068. Do you think that some additional subdivision might be advantageous. What was suggested to us was that in some cases they are so comprehensive that they comprehend more than any one person is likely to wish to register for, and that by some further sub-division you might increase the power of using a particular mark?—That is so. I considered that point some time ago, and it occurred to me whether it might not be more desirable to re-register in an amended classification at the end of 14 years than to touch the classification at the present time, because so many of the first applicants in 1876 claimed to be proprietors of articles in the whole class.

3069. And so they would be because they are registered. It is only to enable new persons to register for parts of a class?—Yes, but the classes are blocked now by so many of the old registered owners that I should not be able to divide the classes up.

3070. Why could not you divide the classes up for the future?—Because if I divided it into three divisions I should have to put the old owner, who has got the whole right into each division, and that would be better done at the end of 14 years, because I could ask him, "Do you intend to register for the whole class?"

3071. Fourteen years from when do you mean?—From the end of 1876, which would be two or three years from the present time. I think it would be better if we could get a revised classification and for them to re-register at the end of 14 years in the revised classes.

3072. But those who are registering now would not have to register for many years to come?—No.

3073. Would there be any difficulty in having a new classification which should, instead of re-numbering, divide Class 28 say into Class 28*a*, 28*b*, and 28*c* for the future?—Not the least.

3074. Of course a person registered down to this time in Class 28 would cover the whole of them?—Yes.

3075. And for the future you might register in Class 28*a*, 28*b*, and 28*c*?—Since 1883 we have been enabled to do that a good deal, because section 72 subsection 2 was altered, and I take now more than one similar mark in the same class for different goods. I have been able to extend it in that way. There is no difficulty at all, I should think, because the words of the Act say that you must register for particular goods. Section 65 says, "A trade mark "must be registered for particular goods or classes "of goods." That would allow it, I should think. The classification framed in 1875 unfortunately was, like many other things, left until December, and the Act came into operation on the 1st January. I knew nothing about it until Christmas week. It was drawn up after Christmas Eve, and we had it printed and circulated before the 31st December, in order that the public might have 10,000 on sale, so that we had not much time to consider it. There is another point with regard to classification. It has been recommended that we should have a sort of international classification. Of course it would be very useful if classes were the same in all countries, but that would entail enormous work. Each country having adopted a different classification it would take some very long time before we could agree to a uniform classification. Then as to section 66, there have been complaints that a series of, say, 30 labels having been covered by one registration fee it is a hardship that such a registration will not cover a dozen further labels. Mr. Johnson complains that if, under that section 66, we allowed him to register a series of labels, differing only in the names of the articles, and the proprietors some short time afterwards wanted to extend it to some other goods he is not covered by that; but it seems to me that he would be.

3076. He stated that if he had registered for "Lemon drops" he could not use the same thing with "Rose drops"?—I should have thought he could. That section was intended to meet those cases. It might be altered a little.

3077. What I think he drew his conclusion from was this: "When a person claiming to be the pro- "prietor of several marks, which while resembling "each other in the material particulars thereof yet "differed in respect of the statement of the goods for "which they are respectively used or proposed to "be used," he understood, therefore, that if you register a series differing in respect of the statement of the goods for which they are respectively to be used, or proposed to be used, you could not use them with the distinctive device for any goods which were not mentioned in one or other of the series?—Yes. He said he wanted a right to vary a word in any further form without additional registration. They would put in on a sheet of paper 20 labels, "raspberry," "strawberry," "apricot," "greengage," and so on, and then if he wanted to extend those he thinks that he would not be covered.

3078. (*Earl of Crawford.*) If he put in one, it would be as good as any?—Yes.

3079. (*Chairman.*) If his distinctive device is used any person using it is liable whatever he adds to it?—Yes.

3080. If his distinctive device is not used he is not liable?—We used to recommend them in early days

Mr. H. R. Lack.

18 June 1887.

to register that part in blank, and to put in what they liked.

3081. What I rather doubt is whether section 66 comes to anything or means anything. I do not understand what the effect of it is. They do not differ; they resemble each other in material particulars; that is to say, the trade mark, that which is essential, is the same in all. What they differ in is in a variety of statements which form no part of the trade mark, and for which you get no special protection?—The whole pith of that section is in the tail, "a series of trade marks shall be assignable and "transmissible only as a whole, but for a other "purposes each of the trade marks comprising a "series shall be deemed and treated as registered "separately."

3082. What puzzles me is that that seems rather to treat the added matter as part of the trade mark?—That is for foreign registration. That is to enable me to give certificates, to get the mark registered in Germany. Our plan of registering with a blank was not recognised in Germany, and unless I certified that the label that they took to Germany had been registered they would not register it in Germany.

3083. That might be met by allowing at any time the deposit at the office of the mark with the statement of any fresh goods with which it is proposed to be used?—Yes.

3084. If that is of use for the purpose of foreign registration that might be done, might it not?—Certainly, but would you allow him to do it for nothing?

3085. No?—That is what is wanted. Their object is that they may come to us, say, every quarter.

3086. You might on payment of some very small fee, say, 2*s.* 6*d.*, allow him to add anything?—Yes, to pay for the expense of the work. Then section 67 is as to colour, which is a very difficult question. Under this section I have no doubt you have heard people are enabled to get up colourable imitations by using the same colours, although the devices may be different. But that was not the object of this section. The object of this section was to prevent a person getting near another person. For instance, they tried to get near Bass's triangle, beginning by, perhaps, pink, and then getting different shades nearer up to him, and on consideration it was found very difficult to say where one could be said to begin and where another ended, and so it was put generally that no colour should be allowed.

3087. Can that kind of thing be meti n any way, except by a penal provision for an actual fraud? Of course a trade mark is intended to guard against two things. It is intended to guard against perfectly innocent and accidental resemblances; it is intended also to guard against intentional imitations. Well, so far as accidental resemblance is concerned, of course a man can only be protected against that by registration, but would it not be possible to make penal an intentional imitation for the purpose of inducing people to believe that the goods are not supplied by those who are really supplying them, but by some other makers who have got a reputation in connexion with the use of a particular mark of any kind whatever?—Yes.

3088. Is not that the way that it can be met. You cannot allow registration of form and colour, and everything else, on account of the great difficulty of a man always conforming to his own colour?—Of course a sky-blue triangle would not interfere with Bass.

3089. But you might have, as we have seen this morning, a case where the actual registered design was not imitated, because that which was of the essence of the trade mark was not there, and yet you might have the label, or a number of labels so, formed as to be obviously intended to deceive and capable of deceiving. You cannot deal with the latter cases, strictly speaking, under trade mark provisions, which give you a right to the trade mark and a right to prevent anybody else using it, they could only be dealt with in the same way as other frauds are dealt with?—Mr. Johnson suggests that "colour" in the singular should include the plural, but I believe in an Act the singular always includes the plural. Mr. Starey wishes certificates to be issued differing in colour from those on the register. We suggest that we should not give them certificates unless they resemble.

3090. The suggestion was that sometimes they could not get the exact colour if it were an old label, that they could not get them made exactly the same; and what was suggested was that if such was the case they should produce one as nearly like as possible, and you should give a certificate for it, and should state the difference between it and the registered label?—Yes; they use very different colours sometimes. My practice would be not to certify that Bass's label was blue when he had registered a scarlet one.

3091. Do you see any objection?—No; there is no objection to certifying the fact; but if he brought me a yellow triangle, and said that he had registered that, when he had registered a scarlet one, I should think that would not be correct.

3092. (*Mr. Hutton.*) But they do not register colour?—They do not now, but from 1876 they did.

3093. Supposing any one used Bass's triangle in blue, that would not be an infringement?—It would be; because under section 67 Bass could claim the triangle in every colour. He could not originally. He could only proceed against anybody who used a colourable imitation, a red of some kind. Then section 68 is as to advertisement. It says, "Every application shall be advertised;" but it ought not to be every application, because I refuse a good many, and it is not necessary to advertise those which are not accepted.

3094. (*Chairman.*) I think you agree that there is no reason why advertisement should not take place within a short space of time after receiving the application?—No; that has been usual, it is advertised within two or three weeks, I think. Then on section 68 there is a suggestion as to controlling the size of representations. That, I think, will cost a good deal more. We send out instructions that the block need not be larger than is necessary to give a proper idea of the mark. Abroad they have a general rule that they must be so many millimetres or centimetres; and the consequence is that the representations do not give you any idea of the marks. They are black daubs; you could not compare them. They are no use to the public or to the office.

3095. Why should not you charge them something extra when they send you larger representations?—We have a scale. We charge 2*s.* an inch down the page.

3096. What struck us was that you should have a scale by which you charge them per inch down the page, and not anything extra when they go across the page. Why not charge them something extra for that?—There is no reason why we should not. The Treasury would be delighted.

3097. (*Earl of Crawford.*) The journal is partly double and partly single column?—Yes. The Queen's Printers are not very noted for arrangement; but it would cost us a great deal to send back blocks and explain it to people. A man would say, "Why should "not I have a block the size I like?" I should say, let them be charged according to space. Then as to section 69, Mr. Johnson omits the word "first" advertisement. The reason is that sometimes a mark may be altered. If a mark is altered after the first advertisement by direction of the office the Comptroller could extend the notice to apply to the amended form of mark on the second advertisement. There is no difficulty about that. Two months is too long for sending in the counter statement. I do not know why they fixed two months. I think that might be shortened considerably.

3098. (*Chairman.*) Was not one suggestion that both these two months should be altered into a month?—I think the first ought to be two months for giving notice to the public.

3099. Two months is not long enough if you take

Australia as a place to be communicated with by letter, and it is too long if you take a nearer place?—Yes.

3100. The suggestion was that a month for all practical purposes was as good as two?—We have two months in the patents. Then, as regards the bond, I see no reason why the bond should be required. Then as to the costs of the present system of opposition, Mr. Starey says he cannot obtain costs against the Cutlers' Company in oppositions.

3101. If an opposition is successful the opponent still has to bear his own costs?—Yes.

3102. It would seem reasonable that provision should be made that a successful opponent should get his costs if it is thought that he ought to get them?—Certainly, I think so. Then there was a suggestion whether the Comptroller should hear in the first instance, as in patents.

3103. What do you say to that?—Well, of course, it is only a question of how much the Comptroller can do. If they were very numerous he could not. I take up two half days now in a week, from half-past one to half-past four, on Thursdays and Fridays. We have hearings at present under section 94. That is the hearing before refusing; and if they were not more than that I should think it would be more useful to have both parties up, and it might save a good deal of expense. But then the question would come whether there should be an appeal to the court, or the law officer, or the Board of Trade; and it would be necessary in those cases to provide a rule that if the oppositions are not proceeded with within a certain time the Comptroller should register, so as to force them on. Then in section 70, line 3, the word "classes" should read "descriptions."

3104. That is to make it conformable to the other sections?—Yes. Then as to section 71: Query, in place of, "The Comptroller may refuse to register any of them "until their rights have been determined according "to law, &c." "The Comptroller shall hear the "parties and decide the case, subject to appeal to the "law officer or the court." Section 71 is a section which has not been used. It says, "Where each of "several persons claims to be registered as proprietor "of the same mark the Comptroller may refuse to "register any of them until their rights have been "determined according to law; and the Comptroller "may himself submit, or require the claimants to sub-"mit, their rights to the court." Well, I have never submitted cases to the court, although I have heard two or three pending applicants. The question is whether it would do to make it where two or three persons are applying at the same time for the same or a similar mark.

3105. That the Comptroller should hear them, with an appeal to the court?—With an appeal to the court. Then as to section 72, the question is whether in determining the resemblance the Comptroller shall hear both sides and determine subject to an appeal. Of course section 72, subsection 2, raises the next point. The Comptroller has to decide as to resemblance, which is a very difficult thing. "The Comptroller "shall not register with respect to the same goods, or "description of goods, a trade mark so nearly re-"sembling a trade mark already on the register with "respect to such goods or description of goods as "to be calculated to deceive." Of course that is one of the most troublesome parts of the Act. Registered owners always think everything will deceive. Persons wishing to get on and wishing to get as near a registered mark as they can think the other way, and the Comptroller is at great difficulty in deciding in these cases. The question is whether you think I ought to hear both sides, if the examination is to be continued by the office, or merely to hear the applicant, as I do at present. We send notices to the registered proprietors, but, of course, they naturally write back and say that they think the applications would interfere with their property.

3106. (*Lord Macnaghten.*) When you say that, I suppose it principally turns on a comparison of the two marks taken in connexion with your experience of the thing generally?—Yes; but there are many points in a complicated label which I should not know; for instance, there may be two or three figures, such as the dog, the crow, and the fish; and it may be there is some sort of story attached to them, which the people know. I cannot be supposed to know everything that is going on in the whole trade of the country. Of course where the marks are very simple there is no difficulty. It chiefly occurs in regard to labels.

3107. (*Mr. Hutton.*) What they ask for in Manchester is, "Where there is an application for a mark "which appears to clash with any mark already on "the register the registrar be required to serve formal "notice on the new applicant and on the owner or "owners of the mark with which the new mark "appears to clash"?—That would entail considerable expense on the registered owner. At present he rests assured that the Government will protect him fully.

3108. Now a new mark may be registered without his knowledge unless he is constantly watching these new marks which are advertised?—Yes.

3109. (*Chairman.*) But if it appeared to clash you would reject it. Therefore I do not quite see how you would ever serve notice at all?—It is difficult to know when to give notice. I have brought these publications to show you. There is the "Tobacco" Journal; this is the Chemist and Druggist; this is the Ironmonger; this is the Mineral Water Trade Review; and that is the Boot and Shoe Trades Journal (*producing same*). In each of those they publish a list of trade marks applied for; so that to a certain extent you may say the trades are enabled to watch for new marks. The trades seem to look after the marks.

3110. (*Mr. Hutton.*) Do they publish the design?—They publish the representations, you will see. You see "Woolf and Phillips" for tobacco. Any person who is interested would go and look at the journal.

3111. (*Lord Macnaghten.*) In some cases they give the brand, I see?—Yes, but not in all.

3112. (*Earl of Crawford.*) It is photographed down from the journal?—Yes, from the journal.

3113. (*Mr. Hutton.*) There are plenty of new applications for mineral waters?—Yes. There are plenty of weak marks amongst the mineral waters.

3114. What do you call weak marks?—Poor marks, with not very much design.

3115. There is "Fizzine"?—Yes; "Fizzine" or "Pop" they think good.

3116. (*Lord Macnaghten.*) "Salutaris"?—"Salutaris," I think that is simply in a circle. We should take "Salutaris."

3117. (*Mr. Hutton.*) There is "Ginger Stout," I see?—That may be with a device, but they think a triangle is quite enough. Mr. Johnson suggests that where the registered proprietors cannot be found the Comptroller might advertise, and, after a certain time, proceed with, marks merely conflicting in a minor degree. There is great difficulty. I have refused registration on the ground of a mark which is on the register. I say "I will register if you can get consent," or I will send and ask if they will give consent, and the letter comes back marked "gone away." Very often the firms have entirely disappeared and broken up altogether, and there is nobody to take the mark off the register. If you think, my Lord, we might proceed after three months' advertisement in the papers that could be done.

3118. (*Chairman.*) That would be only in cases where, as far as you could ascertain, no person had succeeded to the business?—Yes. Then there is the difficulty that I must not register for five years. It would clash with that. That is section 79, subsection 5: "Where a trade mark has been removed "from the register for nonpayment of the fee, or "otherwise, such trade mark shall nevertheless, for "the purpose of any application for registration "during the five years next after the date of such "removal, be deemed to be a trade mark which is "already registered."

Mr. H. R. Luck.

18 June 1887.

3119. Is there anything else as to section 72?—Mr. Cutler suggests addresses for service on foreigners. I think that might certainly be useful. Mr. Clark objects to the use of the inquiry form which we send out.

3120. What is that?—That is, when I am in doubt as to whether the mark applied for would do injury to a registered owner we send him a copy of the mark and ask him whether he has any objection. Of course it raises objections.

3121. But ought not these inquiries to be limited to cases where you have made up your mind that but for consent you will not register?—Yes, it ought to be. It is somewhat like your Lordship's directions on the interference notice, unless the examiner is sure he is not to do it.

3122. Now as to section 73?—As to section 73, it should be read with section 86, which is as to anything contrary to law or morality, and the suggestion is to add public order. People do not seem to understand that; but the case of the tobacco labels to which I referred the other day, where a man used "Habana and Juan Blanco on foreign cigars "of British manufacture," we should consider that that would come under section 73, anything that would not be entitled to protection in a court.

3123. But what rather puzzles one in that is the use of the word "exclusive." "It shall not be law- "ful to register as part of, or in combination with, "a trade mark, any words the exclusive use of which "would, by reason of their being calculated to de- "ceive, or otherwise, be deemed disentitled to pro- "tection in a court of justice." Because if they are part of the trade mark one can understand it; because if they are part of it probably it would give a right to the exclusive use of them; but words which are used in combination with the trade mark are not words to which any person has a right to the exclusive use, and, therefore, one does not understand what is the meaning of the words, "It shall not be "lawful to register as part of, or in combination with, "a trade mark, any words the exclusive use of "which would, by reason of their being calculated "to deceive, &c." You do not give the exclusive use?—No, it is not at all clear; but there have been applications for marks, or parts of marks, which would be offensive to religious bodies, and contrary to public order, and I should refuse those. Anything contrary to law and morality, it says. Then section 74 we have already dealt with. Then as to section 75, they merely propose, instead of putting "Registration of a trade mark," to put "The appli- "cation for registration of a trade mark shall be "deemed to be equivalent to public use of the trade "mark." It is so really, because the trade mark dates from the date of the application.

3124. But a doubt has been suggested whether the rule making it so date was not *ultra vires*?—Yes; it ought to have been put into the Act. It was only because it was originally in the rules that it was continued; but it might be put into the Act.

3125. And if put into the Act it would be as well to declare that it had been lawful to treat the date of application as the commencement of registration, and to make it retrospective?—Yes, to make it retrospective. As to section 76, Mr. Cutler says, "place trade "marks on the same footing as patents under sec- "tion 31."

3126. That is to enable the judge to certify that the validity came in question, and so to give greater protection as to costs in future cases?—To that there is no objection. Section 77 is dealt with by the Merchandise Marks Act. If the present Merchandise Marks Bill be passed, old refused marks, such as non-registered marks, would be deprived of protection.

3127. The suggestion there was that the provision is that proceedings should not be taken unless they have been refused, and the Comptroller may give a certificate that registration has been refused. It was suggested that it should take some other form than that, because sometimes, with reference to proceedings in foreign countries, it would be thought that it had been refused, because for some reason or another it was improper. It casts discredit upon the mark. I thing the suggestion was that it should state that it was not capable of registration, or something of that sort, instead of saying that it had been refused registration?—But there is no provision in the Bill to protect these marks, I think.

3128. Then as to section 78?—As to section 78 the suggestion is to enter disclaimers on the register, and to read that with section 85. Section 85 is, "There "shall not be entered in any register kept under this "Act, or be receivable by the Comptroller, any notice "of any trust, expressed, implied, or constructive." I do not think disclaimers ought to be put on the register. I should only register, as your Lordship suggested, the registerable part of the mark, and let them do what they like without disclaiming.

3129. I do not think that that was referring to disclaimers properly so called, I think the suggestion was that when an undertaking had been given not to use a trade mark excepting in certain markets that should be put on the register. Do you see any objection to that?—No; only I think it was considered that section 85 stated that I was not to put any notices of trust on.

3130. We are looking to the future now, not to the wording of the Act. It may be doubted whether that would be, strictly speaking, putting a trust on the register; but supposing it was advocated strongly, do you see any objection to it?—No; it is like putting on a deed for a patent, that is all. Then section 79, subsection 5, was referred to. That is as to allowing marks which have been removed to be used by others before the expiration of five years from 1890. Mr. Starey suggests that it would be very useful to be able to appropriate these marks.

3131. It is difficult to see why they should remain dormant?—I think a year would be quite enough.

3132. (*Earl of Crawford.*) Could not you shift all the marks that were dormant of one class into another class?—So that they might be used in another class.

3133. Yes?—Yes, I think so. Then as to fees; of course there is no difficulty in altering the fees. You may make them in any proportion the Committee think fit.

3134. (*Mr. Hutton.*) Would there be any objection to a small annual fee for retaining the mark?—No; except that I think it would be very troublesome to pay a small amount. People very nearly always forget it, and then they have to apply to the office for an extension of time; and it gives a great deal of work for nothing. Of course we charge them.

3135. I was looking to the revenue as well?—Yes. We altered the first fee from 1*l.* to 5*s.*, to give the people a chance. You see they can make four applications now for 1*l.* Originally, if a person applied he paid 1*l.*, and if he was refused he lost the 1*l.* Now he only loses 5*s.* a time, and the chances are that in four shots he can get a mark. That was the reason for reducing it.

3136. (*Chairman.*) I think Mr. Johnson rather suggested that having regard to the work thrown on the office the initial fee should be somewhat increased, and the next fee somewhat diminished?—Yes; that he would rather have a heavier fee paid on the commencement.

3137. Yes?—I think, seeing that we have to keep the mark on the register for 14 years the fee might be increased.

3138. What do you say as to the double fees in Sheffield?—That, I think, I can explain under section 81 with reference to the Cutlers' Company. The fees can be re-arranged. Mr. Johnson says they should be increased on application and diminished on registration. Mr. Starey agrees with Mr. Johnson that they are too low at present. Then we come to the Cutlers' Company. The Cutlers' Company, of course you all know, is an old company, and they had a right to put marks originally on cutlery alone. Their Act in 1860 was extended to goods made of steel, or

iron and steel combined, having a cutting edge. That is to say, when they invented tipped goods, instead of making them of steel, they only made the tips of steel. It was an improvement in those days, but now, of course, steel is so cheap that it does not make much difference. But before the Amending Act of 1860 they extended the goods to which their marks were applied, and between 1860 and 1875 they used their marks on other goods. They stated to the Government that they had created a user for goods other than those mentioned in the Act of 1860, so that in 1883 it was decided to give to the Cutlers' Company the use of marks upon their old cutlery goods, that is to say, scissors and things on the 1860 classification, and on what they had used them. This subsection 3 gave them this: "An application for "registration of a trade mark used on cutlery, edge "tools, or on raw steel, or on goods made of steel or "of steel and iron combined, with or without a "cutting edge." That is to say, the Cutlers' marks were extended to some goods that had not a cutting edge, made of steel or steel and iron combined. Therefore in some classes, in Class 5, for example, a person would have to make two applications, one for steel and iron goods, which come within the cutlers' classification, and a second application for copper, which is not within their classification; however, that has arisen owing to the Cutlers' Company being localised. If it were not for the convenience of the Cutlers' Company the applications would have been made to me direct, as from all other places.

3139. (*Mr. Hutton.*) On plated ware they have nothing?—On plated ware they have to apply to me; that is the complaint.

3140. But not to the Cutlers' Company?—Not to the Cutlers' Company. You see, taking the United Kingdom as a circle, they have a small circle in that for certain goods. They must be goods made of steel, or of steel and iron combined, with or without a cutting edge. They are not entitled to cover anything else. A cutler living in Hallamshire wishing to register a trade mark, like "Mappin," for example, for electro-plate has to write to London. The Cutlers' Company's register is for their own convenience.

3141. (*Chairman.*) What they seek is that Hallamshire shall be made for all purposes a place for registration, although it would have a privilege, not merely for its cutlery, but for everything, which no other part of the United Kingdom has?—Yes. You may may tak Warwickshire; that ought to be treated in the sam way. It was agreed in 1883 that they were quite content with the arrangement.

3142. What is the next point?—Mr. Starey says, Applicants residing in Hallamshire have to pay double fees in certain cases, and that he cannot obtain costs against Sheffield registry in cases of opposition to marks in Sheffield classes applied for by persons residing outside Hallamshire. The provisions of the Act and of any general rules are made to apply to the Cutlers' Company by subsection 7. Then as to the fees, the Comptroller gets one half of the fees paid to the Cutlers' Company. The residents in Hallamshire would not complain of higher charges, unless they considered the prestige of the Cutlers' marks were worth so much more than an ordinary trade mark. What they say is that the Cutlers' mark possesses a value beyond that of an ordinary trade mark, owing to the antiquity of the institution; that the Cutlers' marks have (and no doubt it is true) a greater value than other marks; and if that is so, and the Government continue the privileges, they must be prepared to pay for them. I think the question is raised by some persons, I fancy, who are resident in Hallamshire, but who are not cutlers, and have not the privileges of the Cutlers' Company, and they have to make a double application.

3143. (*Mr. Hutton.*) What is the difference between the Cutlers' Company's registered mark and the Board of Trade marks?—Simply that the Cutlers' Company's marks are very small. There is no difference really. You know the usual marks on knives. They are generally very small and very easily protected—a Maltese cross, a tobacco pipe, a pair of scissors. They are nearly all single objects. Messrs. Rodgers have a star and maltese cross.

3144. But the public are not able to distinguish the difference. No, but the wholesale people in the trade do. They know the marks.

3145. How long does their privilege last?—The Cutlers' Company?

3146. Yes?—As long as the Act lasts. The Cutlers' Company began in James's reign, I think, and the privileges have been continued by various Acts down to the present time.

3147. I see there are two Acts referred to here, 1791 and 1812?—Then they had one in 1860. With regard to Mr. Hughes's suggestion in Question 2217, about old owners being made to apply, I agree in that. Then he spoke about the two registers. The two registers referred to were merely permitted for the sake of continuing the privileges of the Cutlers' Company; they are not necessary for London at all.

3148. (*Chairman.*) Then as to certificates being issued at Sheffield, what do you say?—The Act only authorises the Comptroller to issue certificates, and the foreign Governments only recognise my certificate. I do not think it would be desirable. I do not think Mr. Hughes pressed it at all. Then there was a point he raised in Questions 2227 and 2228 of a hearing officer of some description; but the desirability of having another officer working upon different lines is questionable. That would seem to me to be rather undesirable. We want, if possible, to keep, and it ought to be kept, to one person. If you have two persons differing it is quite enough, and if you have three it makes it worse for the public. I have put a note to that, "In dealing with this, many office details "have to be taken into account, and we should have "to educate a hearing officer." Then in Question 2230 he suggested that persons should only be allowed to put "Sheffield" on goods which are actually made in Sheffield, "but query, by way of address." That is a point which they are making a great to do about now, and I should have thought that as regards Sheffield, "Sheffield" is more valuable than the name very often on cutlery. People would not recollect whether it was Turner's or Thompson's, but seeing "Sheffield" upon it they would value it accordingly.

3149. Should you allow "Sheffield" to be added to a trade mark registered by a person carrying on business and having his address in London, say?—No, it ought not to be.

3150. That you would think, at all events under an altered wording of section 73, would come within section 73 as being a word, the use of which would by reason of its being calculated to deceive be disentitled to registration?—Yes, the great difficulty has been the habit of the trade. It does not matter where he may be, in Brompton or Kensington, the shopkeeper orders knives to be made at Sheffield with his name and address upon them. For instance, you may have John Jones at Windsor; he does not make his own knives, but they are made for him in Sheffield, but Windsor is put upon them. Another manufacturer may get them made cheaper, perhaps, in Belgium. He sends to Belgium and they mark them William Robinson, Windsor. It was so with the Remington rifles. They were made out of this country. If, however, you worry the trade too much, what they will do is this, they will simply import the goods without any marks on at all. They will not stand more than a certain amount of worry in these days of low profits; they will not put any marks on at all.

3151. (*Mr. Hutton.*) The same thing would apply to a watch coming from Switzerland?—Yes.

3152. (*Chairman.*) But the same would not be done if they imported them without marks at all?—No. Then there is another custom when you order a certain quality of an article. If you ordered iron, say Low Moor iron, the merchant in London would not think he was doing any harm if he gave you Low

Mr. A. R. Lack.

18 June 1887.

Moor quality. He would not get it from Low Moor, but he would get what he would say was just as good from some other district, and sell it as Low Moor.

3153. (*Earl of Crawford.*) He would very soon get found out?—I think the people would take that. It is very difficult to meet all these trade customs.

3154. (*Lord Macnaghten.*) Trade customs are generally deviations from honesty, I think?—Yes, I am afraid so. As to oppositions, referred to in Question 2240, *see* suggestions submitted under section 69. Those might be dealt with. Duplicates are rendered necessary for convenience of Sheffield. Section 85 is as to entries on the register, which I have already dealt with. Section 86 gives power to refuse to register a trade mark if it is contrary to law or morality.

3155. (*Chairman.*) It is suggested that the words "in his opinion" should be left out?—They make a great fuss about it, but there has never anything happened. It does not matter whether it is there or whether it is omitted. Then as to section 90, "person aggrieved by omission of name only." It is a peculiar clause. A person is aggrieved by the omission of the name only, but he is aggrieved by any entry. The point is whether that was intended to be the name, address, and all sorts of things.

3156. Whether "omission" governs "the entry," or whether it is the omission of the name, or the entry of anything else?—Yes; he ought to have been aggrieved by anything that is left out, not by a particular name. Then as to section 91, Mr. Johnson suggested that the Comptroller should have power to reduce a claim. It is particularly confined to the correction of clerical errors, and altering addresses, Mr. Johnson suggested that where a person had claimed more goods than he wanted he might be allowed to disclaim without going to the court. I do not see any objection to that.

3157. Then section 96?—Upon section 96 the suggestion was that the Comptroller should be authorised to certify labels differing in minor points from those registered; query English and foreign courts. The only thing is whether the foreign courts would take them. Then it was suggested that the certificates in legal proceedings should be general. That is a point: they want to have a certificate upon registration which is to be useful in any legal proceedings. I cannot quite recollect why, but Lord Thring particularly objected to giving a sort of covering certificate for all purposes.

3158. It does seem rather undesirable to require a certificate on the institution of fresh proceedings?—Yes. In order to meet that, we got out that notification, I do not know whether you have seen it.

3159. I think Mr. Whittle showed it to us?—It was a printed form. This is it (*producing form*).

3160. That is a question of fee?—It is merely a question of fee.

3161. It is one certificate for each mark so as to include all the number of classes for which it is registered?—I think that is only reasonable, that the certificate should cover all.

3162. Then the last section is the 103rd?—That is as to international arrangements.

3163. That section, you think, requires some revision, having been drafted before the complete international arrangements were arranged?—Yes, it does. Then the new clauses I have put down. Mr. Johnson suggests a clause as to appointing trade committees for the settlement of trade questions. I have only brought a few books which I have just got from our library, but I think they show that the trades, as a rule, now-a-day look after all their own marks. It would very much impede work if I had to consult outside bodies. I do not think it would really be of any use as a rule.

3164. There would be nothing now to prevent their voluntarily forming trade committees. You would pay all due respect to representations made by them?—Yes, certainly, and we should supply any information to them. We have always consulted any bodies which have been established, the chemists and druggists, and the wine trade, and various other bodies. Then Mr. Johnson's No. 10 is, "Some fixed principle should be laid down for dealing with conflicting marks in connexion with which euphony are involved," "like sounding," I think he means. That is not practicable, because first of all we have neither [nēther], neither [nehther], and neither [nīther], which are the same word. We have one person saying castle [cāhstle] and another saying castle [căstle], you would have terrible difficulties in dealing with such a project. The next one is "Board of Trade shall publish directions affecting public bodies." I have put "query whether Board of Trade should issue any other than rules under section 101." I do not think that the Board of Trade should give any other than directions. It gives directions as regards staff and management, but query as to rules which would guide the public. 4. The Master of the Rolls' three rule, with regard to old marks, as formerly existing, should be reinstated without having to go to the court.

3165. That would require legislation?—That would require legislation. There is one difficulty with regard to that I may mention, that at present only one representation of an object is allowed, and that, of course, makes it very difficult for people to get marks, because, for instance, a small tobacconist in Wick might have a representation of a monkey for tobacco, and another tobacconist at Plymouth might have a representation of a monkey, and there might be eight or ten in different parts of the kingdom doing small local trades who would never interfere with each other. Now the first one who comes to me to register stops all the rest, and supposing an exporting merchant were to come from Bristol or London with a monkey, which would be a very good mark, I should say, no, you cannot have it because Mr. Macpherson has got it at Wick. That is a great drawback to the system.

3166. What is the remedy you would suggest for that?—The remedy is that they should register without my telling them that there are similar marks on the register; that they should register only.

3167. (*Earl of Crawford.*) And run the risk of being stopped?—And only be pulled up when they actually conflict. As time goes on it would make it exceedingly difficult. I cannot prevent any little man in an out of the way village, if he takes a fancy to have a trade mark, though he does not sell anything at all, probably blocking a mark, and a very valuable mark, which might be used on thousands of packages if it went into an export trade. That is the great drawback to it.

3168. (*Lord Macnaghten.*) I suppose sometimes these little men in some trades develop a large trade?—They do sometimes.

3169. I have known some cases in which a very small local trade has grown into a very large trade?—Like Whiteley's. Whiteley began with one small shop with his double globe and now he is the universal provider. Such cases are rare. Then the next is 5. "Marks refused at one period should not be subsequently accepted for others without notice to original applicants." That is only reasonable, I think. Then the 6th was as to "user subsequent to 13th August 1875." I have put against that, "No excuse for not registering." It would be an encouragement to keep off the register. I suppose your Lordship would consider that a point which is worthy of consideration?

3170. The suggestion was that when registering he should state how long it had been in use?—Yes.

3171. But the idea was that if he so stated the length of use it might prevent oppositions which would otherwise take place in consequence of people imagining that their mark had been really the first, when if they knew a man had had his in use for three or four years they would not oppose?—Yes.

3172. (*Lord Macnaghten.*) Unless you pay a higher fee it does not seem fair. If you made a man pay something more, I do not see any objection?—I think

if that were put into the Act, they would follow the advice of a late Bishop of London, who, addressing his clergy, said, "In your zeal for antiquity take care that "you are ancient enough." I think they would all begin to claim back to 1876. Then the 7th suggestion was as to user apart from goods. Is that possible, my Lord? It must be on or connected with the goods.

3173. (*Chairman.*) The suggestion was that it might be used on invoices or advertisements?—At present, as far as I know, that is not covered. It says that the trade mark must be on or connected with the goods.

3174. Do you think it would do if he had used it in his trade?—I do not see any objection any more than imitating a crest.

3175. (*Earl of Crawford.*) A crest is private property?—Yes, private property. Then as to expediting applications, I think that would be objectionable. The proposal is to pay a higher fee for expediting. There is no reason for it, because we really can do it if we only know what lines we are to go on. It is quite possible to form a staff sufficient to carry on the work; and I think people would complain very much that it would be unfair to take some applications before others. Then as to trade mark cases being referred to one judge, that is a proposition that has been made over and over again and been always objected to as far as I am aware.

3176. (*Chairman.*) But there would be a convenience in having all the applications if possible consistently with others people's interests in the same court?—Yes, in the same court.

3177. (*Lord Macnaghten.*) I do not know that there would be. You would get into a sort of groove?—The objection is that they would get into a groove, and there would be nobody else to take the work if anything happened so that the judge is removed.

3178. (*Chairman.*) That would have to be arranged for. I should have thought there was a certain advantage in getting into a groove in a subject like this?—I know the late Sir George Jessel was very much against it. He thought that the courts ought to take the work all round. He had a great share of trade mark work, certainly.

3179. (*Mr. Hutton.*) I think you have mentioned that there is no objection to the Manchester cases being referred to the Palatine Court?—No, I think it would be of very great use. I know that since 1876 the agents who have had cases said, we will take this to Vice-Chancellor Bacon, and this to so and so. They had their favourite judges.

3180. (*Lord Macnaghten.*) So everybody had at one time, until they established what they call a rota?—Yes. As to No. 10, I do not understand Mr. Johnson's proposal as to the necessity for a statutory definition of trade mark rights in connexion with words applied to patented articles and secret preparations.

3181. (*Chairman.*) I think his point was that where a trade mark registered was connected with the use of either some patented process or secret process, it was difficult to tell what rights a person got, whether there was a right to prevent the use of the word which had become the name of a patented article, and what would be its effect when the patent expired: could anybody else sell the article, calling it by that which was its name, that name having been given to it as a registered trade mark. The point was that if you allowed that you might practically prolong the term of his patent?—Yes, that is the object; for instance, Linerusta Walton or Linoleum would be protected for fourteen years during the existence of the patent, but at the expiration of the 14 years the name becomes public property.

3182. Does the name become public property if it is a registered trade mark?—Yes, that is the question, but with regard to Linerusta they have associated Walton with it so that they get that private element. The "Linerusta" by itself will only become public property. That is what he means.

3183. That is to say, anybody could make and sell that substance, but the question would be whether he could call it Linerusta, if Linerusta was the registered trade mark of the particular person who made it first?—Yes.

3184. (*Lord Macnaghten.*) Take "Chlorodyne," for instance; that was another case. A man invents a substance and he calls it "Chlorodyne": is he to have the exclusive right to make that for all time merely because he attaches a name to it, which is the only designation of the article?—After a certain number of years it becomes descriptive of the article, and, therefore, it passes into common use. All that you can do is to register your own trade name in connexion with it, such as, for instance, "Dr. Collis Browne's Chlorodyne." Then the 11th suggestion is that "representations of marks should be affixed to "notifications of registration and the goods enume-"rated." There is no objection to that. The object of the present practice was to sell the journal. We merely refer them at the present time to the journal in which they can see the advertisements, and that leads to a good many copies of the journal being sold which would otherwise not be sold. Then "Notifications should set forth the date of registration." There is no objection to that. "Certificate of re-"fusal should be granted for new marks under more "palatable name."

3185. (*Chairman.*) That you have already dealt with?—Yes. Then 14 is "A simple system of de-"positing labels or other printed matter *qua* copy-"right, not including anything of the value of a "trade mark might be introduced under which a certi-"ficate such as issued at Stationers' Hall could be "issued, and which could be used in support of "rights at common law." If they were at a lower fee, of course it would interfere with trade marks, and it would cause a great deal of trouble at present, while the definition of a trade mark is still unsettled, to know whether the labels or printed matters which he proposes to register were really trade marks or not; but if we got the definition of a trade mark settled, it might be useful to allow labels to be deposited merely to acquire a date. Then "Comptroller's costs when wrong." That is covered by No. 7. Then there are a few points as to designs. Section 47, subsection 1, says: "The Comptroller "may, on application by or on behalf of any person "claiming to be the proprietor of any new or original "design not previously published in the United "Kingdom, register the design." Well, of course, there is scarcely such a thing in the country as a new and original design, but it is only when applied to, or connected with, some article. It would be desirable to insert something there—"applied to or connected with any article or articles."

3186. Then the classification requires extending. That is another point?—Yes.

3187. That you think is the case?—Yes, that is so; the applications are so very numerous now that the classification is too restricted. Then section 47, subsection 6, as to searching you understand, I believe, my Lord.

3188. Yes. It was suggested that if the Comptroller refused to register a design the aggrieved person should be allowed to see, at all events, then, if general inspection were not allowed, the design with which his was supposed to clash?—That is done. I do that now. For some two years past I have done that.

3189. Do you allow him to see it before appeal to the Board of Trade?—Yes; when he comes before me at the hearing I show him the design or designs if there are more than one which I think interfere with his; but as regards laying it open to the public, of course it would allow infringers to copy the new patterns without any expense.

3190. (*Mr. Hutton.*) That is, if it is to be open to everybody?—Yes, if it be open to everybody. Two views only are allowed. We are obliged to make some restrictions, because if they put in half-a-dozen

Mr. H. R. Lack.

18 June 1887.

we should have six times the amount of searching, but I should think it would be as well to say, "or such further number as the Comptroller may allow."

3191. Or such further number as is necessary for a full inspection of the design?—Yes. Then Mr. Grafton suggests a copyright of five years. Well, it is five years. I think he must have made some mistake.

3192. Is that so in designs?—Under section 50 the copyright in the design is for five years, a uniform period.

3193. (*Chairman.*) Then the next point was as to putting registered on?—On section 51 we had a long discussion about marking the goods, and I think we have cut it down to almost the narrowest limits possible. We only require on printed or woven designs "Regd." Under the prior Act they had to put the name and address of the proprietor and the date of registration and the three years.

3194. The point made was that it was a hardship to have to put it on every piece in the case of piece goods?—Then unless some simple mark be placed upon the goods, how can the public know that they are infringing.

3195. But they say in answer to that they are only bound to put Rd. or Regd. at one end on the piece, and as soon as that piece is cut off there is nothing to show that it is registered?—That is so.

3196. It does not seem very grand protection?—No, it does not. Of course if he brought his pattern we could tell him whether it was registered. Under the old registration the owner would be able to produce a sample, and we should be able to tell anybody whether the design was registered or not.

3197. Then as to section 58, the proposal is to extend it to persons causing the design to be applied. I suppose you would see no objection to that?—No, I think that is very right.

3198. Then as to the penalties there is a difference of opinion as to what they should be?—Yes.

3199. That is rather a question for experience and judgment in connexion with trade views which have been presented to us?—Yes. I think that covers the whole of the ground.

The witness withdrew.

Mr. A. N. D'Andria.

Mr. A. N. D'ANDRIA called in and examined.

3200. (*Chairman.*) Do you carry on business in Manchester?—In the spinning manufacture in Stockport and Manchester.

3201. Have you experience of the use of headings in connexion with the manufacture and sale of cotton goods?—Yes.

3202. We have heard that in some parts of Asia particularly that headings are regarded as the most distinctive marks which are put upon cloth?—I believe that is so.

3203. It is according to the evidence which has been given that from time to time headings which have been put upon cloth by a particular firm, and have acquired a reputation in the market have been imitated by other manufacturers or merchants?—Yes.

3204. There does not seem to be any difference of opinion that it is an evil thing, and is mischievous to trade?—Quite so, very mischievous.

3205. But there seems to be considerable difference of opinion as to whether it would be practical to register headings. What do you say about that?—The matter has been perhaps neglected too long, but that it is quite possible to register, I believe, in the same way as other trade marks have been registered, and to have a record kept. Supposing that the old headings could not be registered (there are a great many in use at present) the new ones might be easily registered.

3206. Do you think that the damage that is caused by headings being used similar to those which have gained a reputation in the market, has arisen from the accidental use of similar headings, or has been intentional?—Generally intentional.

3207. So that the protection that is required is more a protection against intentional imitation than a protection against accidental resemblance?—Yes, my Lord, that is my impression.

3208. Supposing that penalties were imposed upon the use of a heading so designed as to be intended to, and calculated to deceive, without registration of the heading, do you think that that would in some measure, at all events, meet the case?—Of course that is an extreme measure to take to propose to make it penal, but it appears to be necessary.

3209. I mean by imposing a penalty; at the present time that is the only remedy; if you were to register and if you had a registered heading the only remedy for a person who infringed that heading would be to proceed under the Act for the penalties which the Act provides?—Yes.

3210. Supposing that a heading was not registered and you were to enable a person whose heading had been, in the opinion of the court, intentionally imitated for the purpose of deceiving, to proceed for penalties without registration, of course that would not meet the case of an accidental resemblance. It would only meet a case of intentional imitation?—Intentional fraud.

3211. Do you think that would to a large extent meet the difficulties of the case?—It would. If the law were less expensive there would be a great many more cases before the law courts than there are at present on that particular subject.

3212. But it might be possible to make the remedy as simple and as little expensive though the heading was not registered for an intentional imitation as a proceeding for an infringement of a trade mark supposing you registered the heading as a trade mark?—Of course it would simplify the thing, because then anyone that could see these headings could apply at the registry office, and there would be no excuse. They would say, "You could have seen this; there "is a record kept of these headings which are regis- "tered, and there is no excuse for you to imitate it "at all; what you have done must have been done wil- "fully." It would bring the thing home more easily.

3213. If it were registered?—If it were registered.

3214. What is suggested is that there are such an immense number of headings capable only of differing within a limited extent from the nature of the case, that there would be very great difficulty in determining whether a heading was or was not distinctive?—Yes, my Lord; I suppose that is the reason why the Act did not comprise the headings; but the power of combination of colours is infinite. Anyone that wishes really to have a heading with a certain effect can have it and adopt it as his trade mark. There are many firms that have headings which they use with success, but which are occasionally infringed, and they simply do not like to go to law for it. They simply write a letter and inform the people that it is not their own heading. Some will give in and some will not. Such cases as those might be easily defined by a board of arbitration or a board of experts, the same as you have in the case of trade marks.

3215. The difficulty arises from the considerable difference of opinion, because we have had in the case of particular headings two persons of skill and experience who have differed as to whether a particular heading was a distinctive heading or not?—A good deal depends upon the effect. There is a certain effect given by a certain combination that ought not to be infringed.

3216. Do not you think that the effect too is sometimes heightened by the heading being in conjunction with the distribution of the other marks, which create a general similarity?—That is often the case, but

those marks are sometimes not well stamped, not properly stamped—blotched—or the tickets are torn off and the ignorant natives will look at the heading really. That is what strikes them—the concurrent colour and effect.

3217. Another thing which struck me, on looking at some of the examples which have been put before us, was that if you had only a small piece of two headings and compared them with one another you would see great dissimilarities and be disposed to say that they were different, but if you had the whole piece of each of them the general impression produced would be the same?—Probably.

3218. (*Mr. Hutton.*) Then how could you define the mode of registration?—Of course the difficulty is on account of the large number of headings already in use, but supposing that a firm has some doubts about being able to register the heading that they have been making use of, they might make and introduce a fresh one, or his case might show that that heading has been made by him, and that it has a certain value to him, and that although it has been infringed by the public generally in ignorance of his rights he henceforth should be entitled to use it alone.

3219. I think you say that you would register by the effect?—Well, of course, the object of the heading is to produce an effect.

3220. Take the fact of one manufacturer making a heading with purple, and another manufacturer making a heading with small lines of red and blue close together, that would produce the same effect?—That would not be the same effect.

3221. The effect would be the same?—I should scarcely think it would.

3222. Red and blue make purple?—Yes, but they are in different lines, they are not mixed the same as you would mix colours together.

3223. But two picks of red and two picks of blue a yard or two off will produce the same effect?—Well, I do not think so. Not at an ordinary distance.

3224. Have you any instances of heading? We have had some headings produced where the effect is very much the same only different colours are used?—I have not any with me. Those are the exceptions. Of course supposing we have one thread of one colour and one thread of another colour the effect will not be the same. It would be almost like a mottled colour, or from a distance you might see if the purple predominates, and then the purple effect would be more prominent.

3225. Are you speaking generally of all markets?—Of all markets; but my experience is more particularly in the Mediterranean markets. In India they have been going more on different objects. In China they use birds and fishes, and things of that sort. They have been accustomed to them, but in the Mediterranean my experience is that a heading is necessary.

3226. You do not see any way yourself how the mode of registration could be defined?—Simply to have either new headings or to arbitrate upon the existing headings. Then a heading that had been made and a value given to it, which is afterwards imitated by others, ought to be recognised as the property of the one that has given a value to it or that owns it really. But it is more for the future than the past, inasmuch as they can create new headings and new combinations. In the same way that they have introduced old ones they may introduce new ones, and if there is a dispute, if the experts cannot agree or cannot allow the ownership to one firm of a certain heading because it has been used too generally, that firm has its own remedy and can introduce a new one.

3227. How many headings have you in your mill?—I may say hundreds.

3228. But distinctive headings?—The distinctive headings are very few, because, although they were at first made with that purpose, they have been imitated by others. But nearly everyone comes with a certain new heading, and wishes to have a new heading so as to have an advantage over the others. A man says, "You will make me this cloth, but then I want you "to prepare a new heading so that I may keep it to "myself." In a short time he comes again with an order and says, "I cannot give give you the same "price because the heading has been imitated by "others; they have put it on a lower cloth, and it is "no use now, the character of the heading is spoilt, "and I must have a fresh one."

3229. (*Lord Macnaghten.*) According to your experience, are new headings from time to time invented without any very great difficulty?—Without any great difficulty.

3230. Then I rather gather from you that if some mode of registering headings were adopted it would rather lead to invention in new headings?—Of course it will do that.

3231. If they were protected?—If they were protected, and the interest of the different firms would be better protected as well. They will be able then to introduce certain standard qualities and keep to them. They would be obliged to keep to those headings and good cloths; whereas now if you have a heading that has been put on a cloth worth, we will say, 10*d.* per lb., which is a good useful cloth, they will go and put it on one worth 6½*d.* a lb, and that 6½*d.* a lb. cloth is really worthless. That is how we get such a bad name abroad for falsifying our goods They say "English goods are not what they used to "be. Look at this: I have just bought this, and "look at what it is. It will not stand washing."

The witness withdrew.

Adjourned *sine die.*

Committee Room, No. 17, House of Commons.

Wednesday, July 20, 1887.

PRESENT:

LORD HERSCHELL.
EARL OF CRAWFORD.
LORD MACNAGHTEN.
BARON HENRY DE WORMS, M.P.
JAMES F. HUTTON, ESQ.

LORD HERSCHELL IN THE CHAIR.

Mr. I. Hoyle, M.P.

20 July 1887.

Mr. ISAAC HOYLE, M.P., re-called, further examined.

3232. (*Chairman.*) I believe there are some points on which you desire to make some further observations to the Committee?—As I introduced the question of the registration of woven headings to the Committee, and you have had a good deal of information since then, I thought it only right that I should submit myself for examination on any point that might have turned up since. If there is any question you would like to ask me I shall be very glad to answer it now.

3233. I think the only question with regard to the registration of headings is the practical one of the difficulty of registration arising from the difficulty of determining what is sufficiently distinctive. The witnesses, for example, whom we had called before us who were in favour of the registration of headings, were not agreed as to whether a particular heading was a distinctive one or not. One witness thought it was and another thought it was not. That seems to indicate great difficulty in determining as to the registration of them?—The very fact that they are so extensively used and so varied, I think, settles the question of their distinctiveness. It is a matter of fact and not a matter of opinion.

3234. Is it a matter of fact? Are not they always altering them because they are not distinctive?—I think I can show you illustrations of distinctiveness.

3235. We hear that individual firms have many thousands of headings?—Not many thousands, I should think.

3236. Yes, one particular firm, whose representative came before us, had, I forget how many, but certainly something like 6,000. It was Mr. Smithson who said so?—I should have thought that my firm had as large a variety as anybody, and ours number about 2,400. That (*producing a piece of cloth*) is an article of our manufacture supplied to a merchant shipping to Syria. That is his registered trade mark, and the mark underneath is the one he used before he registered at all. We put this woven heading on, keeping it in our register for him and for him only. Last week he brought us this (*producing another piece of cloth*), which he had just received by the mail on Monday morning, to show us how his marks were being fraudulently copied.

3237. (*Mr. Hutton.*) The fish is a registered trade mark?—No, that is his old mark. It is a common mark, and not registrable.

3238. (*Baron Henry de Worms.*) Of course his contention would be that these two are dissimilar?—The heading, which is not registrable, is exactly copied, and the fish, which is not registrable, is copied, and an inferior article is sent, and so the market is spoiled. You can test the quality in a moment. If you will tear them you will see the amount of resistance in each.

3239. (*Mr. Hutton.*) They both go to the same market?—Yes the one is offered for sale at from 7½ to 9 per cent less than the other can be sold at. There are cases without end where this kind of fraud is practised.

3240. (*Chairman.*) That I should think might be met by a provision making it a false trade description, and rendering a person liable if he put any marks or colours or combinations of marks or colours to indicate that the goods are manufactured by some person other than the manufacturer?—The merchant does not wish his customer to know who made them. That is the great difficulty.

3241. Would it do to say if they were manufactured or shipped by some other person?—The shippers' names appear on both specimens before you. The idea conveyed to the mind of the native is that the imitated cloth is bought from the same manufacturer as the original and superior make.

3242. That is what I suggest. These marks are put here, and in many cases it is not merely the heading, it is the heading in combination with other things. Here, for example, they have put the fish as well as the heading. This is sent into the market in order to persuade anybody who buys it that it is made by the same manufacturer as this. It rather strikes me that ought to be just as much an offence under the Merchandise Marks Act as to send the thing into the market representing that it comes from a different place, or any other false description?—If the mischief could be stopped in any way I think it would be a great advantage, because it is done to pass inferior goods, so that it tends continously to lower the English reputation in foreign markets. This (*producing another piece of cloth*) is a very low quality, for which my firm paid 4*s*. 4½*d*. The headings are fraudulently used little by little until they get on to this very lowest quality of all. This (*producing another piece of cloth*) is precisely the same weight and length as the inferior cloth. This cost 6*s*., and that cost 4*s*. 4½*d*. As things are now, it is quite possible to have a heading designed and used for this at 6*s*., and to put on to an article like that at 4*s*. 4½*d*.

3243. (*Baron Henry de Worms.*) I see it says here: "This heading, colour, and design are used by the manufacturer as his trade mark, imitators beware"?—That is registered. This is what I referred to when I was here before. The Committee may remember I said that this heading had four stripes from the yellow, the same on this side, only that is green instead of blue. The stripes correspond to the four birds—four stripes and four birds. We were advised that a fifth bird had been put on after it left our hands, and sold for five birds' quality. Acting on advice, we put these Chinese characters on, which mean four birds, so these together protect the buyer from being cheated. If you were to test that cloth at 4*s*. 4½*d*. by tearing, it would tear like a piece of paper, whereas there is great resistance in this cloth at 6*s*.

3244. It is for the China market?—Yes. I saw our China agent yesterday in the course of business, and, without any reference to this inquiry, he told me that when, some years ago, we first consigned this quality, it was regarded as "mercurial cargo," and not at all in the regular way of commerce, it was too good.

He says now the demand in China is such that everybody is sending much better qualities.

3245. (*Mr. Hutton.*) How is this heading registered?—It was sent up to the Registrar.

3246. Not registered?—Yes.

3247. By what description?—As a combination.

3248. The whole thing is registered?—Yes.

3249. But the heading itself?—Not alone.

3250. How is that described in the registration?—It is not described at all. You do not describe in registration, you deposit the mark.

3251. The colour is not registrable?—No, it was not described; it was just deposited. No trade mark is described unless a man chooses to do so. I want to show the Committee that American manufacturers of this kind of goods do not put any headings on at all, but they are made up with a double fold outside. This has a single fold outside, but American goods have both ends folded inside, leaving the double fold outwards, which is then stamped with distinctive marks. Now I should prefer, very much indeed, the American mode. It would save cost and a great deal of trouble.

3252. (*Chairman.*) Why cannot you adopt it?—The custom of the trade here prevents; prejudice stands in the way; but the Americans always made their goods up as I have described.

3253. (*Earl of Crawford.*) What is the object of the double fold?—The end is turned inside like that (*showing his Lordship how it was folded*), so that the single ends are inside.

3254. They have a heading but they do not show it?—No, they do not put any heading on at all.

3255. (*Mr. Hutton.*) They fold them differently?—No, precisely the same, only the double fold out. Then there is nothing to distinguish the make but the stamps put on. The reason that it can be done so easily in America is this, merchants largely hold the capital in manufacturing, bleaching, dyeing, and printing concerns, so that really it is all one concern, and therefore they have an interest in stamping on the article the name of the mill or the name of the works where it was produced. The article always shows where it was made; and as the merchant holds the capital, or a great part of it, it is his interest that it should be known where it was made, if it is a good and superior article.

3256. In England the same practice is very frequently adopted of stamping goods with the name of the mill. The manufacturer who ships his own goods stamps the name on his goods?—He can do that, but a manufacturer shipping his own goods is the exception. The rule is for merchants who have no interest in the mills to buy and ship goods.

3257. I am alluding to cases where manufacturers consign their own goods?—But they are very few in number. My firm makes and consigns this. Every mark on it is ours. Everybody knows it. The method of making up by the Americans is rather important as showing the difference in the way of conducting business there. There is no conflict of interests. This (*producing another piece of cloth*) is a very superior quality. Here there are eight of these birds. The heading and the marks correspond exactly. We make four qualities better than this, but if we put heading to correspond with the number of birds in the highest quality the headings would go right across the piece, and so, contrary to our agent's advice, we dispensed with the headings on the 9, 10, 11, and 12 quality, and made them up as the Americans do; and that is established, and settled now.

3258. (*Baron Henry de Worms.*) On this part you have the number of birds?—Yes, 9, 10, 11, or 12.

3259. But you have no border?—No, being our own goods we can do as we choose. Our agent warned us that we should lose money by it. It was not so however, we succeeded.

3260. (*Mr. Hutton.*) Does not that tend to show that it is not the heading but the cloth?—The four birds was the foundation cloth and, having won the confidence of the natives on the lower qualities little by little, we introdnced the best qualities without heading.

3261. (*Chairman.*) The eight birds became known as higher quality than the five and four birds, so when you came to 10 and 11 birds it was believed that they would be of a higher quality still?—Yes.

3262. These go to the Levant?—Some of the qualities do.

3263. (*Mr. Hutton.*) Do you find the same thing in the China market? Are the headings pirated in the same way?—We introduced these goods in the first instance to China, and now better qualities are all but universal. It has taken about 10 years to do it.

3264. Are they much pirated by other houses?—That has never been done so far as we know. The words "Imitators beware" are quite sufficient to prevent any respectable house attempting it. A case occurred with a house that you would know very well if I were to mention the name. The senior partner came to me with the heading of the four birds, and he said: "I am told this heading is used by you. I "thought I would come to ask if it were so. I do not "know whether you have any property in it, but if you "say it is yours I will discontinue it, and furthermore "the goods I have in hand I will send to some other "market; they shall not go to China." That is the only instance, so far as I know, where anything has happened like imitation.

3265. (*Chairman.*) Is there any other point to which you wish to refer?—There is one matter which I should have named when I was here before, and it escaped me. In our business we find a falling off in demand from markets with which formerly we had very considerable business. Italy was a very large market for my firm 15 or 20 years ago, but it has fallen off by degrees until now our friends in Manchester only purchase goods for Italy which the Italians cannot make for themselves. The business is but a fraction of what it was 15 or 20 years ago. The same thing has occurred with regard to Austria. Countries in the south-east of Europe are being supplied with goods taking the place of those which we formerly sold in Manchester for those markets. The same also in respect to Russia. We did a very large business with Manchester merchants for goods going through Trebizond, and that is tapped also, and now Russia is interfering with us very considerably.

3266. (*Mr. Hutton.*) Is not that owing to the high tariffs put on by the Governments of those countries?—The tariffs help them very much, but I consider that steam and electricity have done more than anything else. The whole world is brought so close together now that manufacturing is much easier in foreign countries than it was 25 years ago.

3267. (*Chairman.*) Do you suggest that that is connected with the trade mark question?—I think it may be taken into account in reference to trade marks. I was coming to that in a moment.

3268. (*Earl of Crawford.*) Is it not the case in Italy that the national costume has very much gone into disuse, that they are using cloth where they used lighter materials before?—My information is that it mainly arises from the extension of manufacturing in Italy itself. They have built mills constructed very much like those in Lancashire, they are supplied with Lancashire machinery, and in some cases English overlookers, and so they have got to make, so far as native skill is trained, goods which were formerly sent from this country.

3269. In fact we have taught every other country to make that which we used to produce for them?—Yes, we have done so much business for the countries of the world that they begin to do it for themselves.

3270. (*Mr. Hutton.*) On the goods made for these markets are the manufacturers of Italy and Russia now putting their headings?—No. I am not speaking now at all in relation to headings; it is another branch of the subject I was coming to. English traders are face to face with a rivalry they never knew before. The whole civilised world is now competing

Mr I. Hoyle, M.P.

20 July 1887

with us. I can confirm from my own knowledge acquired in actual business what Professor Huxley said in the "Times" newspaper. He says :—"I do "not think I am far wrong in assuming that we are "entering, indeed have already entered, upon the most "serious struggle for existence to which this country "has ever been committed. The latter years of the "century promise to see us embarked in an industrial "war of far more serious import than the military "wars of its opening years. On the East, the most "systematically instructed and best informed people "in Europe are our competitors. On the West, an "energetic off-shoot of our own stock, grown bigger "than its parent, enters upon the struggle possessed "of natural resources to which we can make no "pretension, and with every prospect of soon "possessing that cheap labour by which they may be "effectually utilised. Many circumstances tend "to justify the hope that we may hold our own if we "are careful to organise victory." What Professor Huxley says from his own standpoint agrees with my experience.

3271. Do those manufacturers now compete with you in the Eastern markets?—I am speaking in respect to my own company's markets; I do not wish to go beyond.

3272. But in your markets do any of these countries ship out goods to compete with yours?—Yes, certainly, that is what I mean.

3273. (*Chairman.*) In China the American competition is much less than it was, is it not?—No, it is more severe in such goods as my firm makes.

3274. Our trade bears a larger proportion to the total as compared with the American trade than it did some years ago?—Perhaps the exports from the United States of America give the most forcible illustration of what Professor Huxley says. There were exported from the United States coloured and uncoloured cotton goods in 1873 about 14 million yards, and in 1886 194 million yards; or, to put it in another way :—

Exports of Coloured and Uncoloured Goods from the United Kingdom as compared with the Exports from the United States.

For one yard exported in 1873 from Great Britain and Ireland 38 inches were exported in 1876.
For one yard exported in 1873 from the United States 5½ yards were exported in 1876.
For one yard exported in 1873 from Great Britain and Ireland 38¼ inches were exported in 1879.
For one yard exported in 1873 from the United States 9⅓ yards were exported in 1879.
For one yard exported in 1873 from Great Britain and Ireland 45 inches were exported in 1882.
For one yard exported in 1873 from the United States 10½ yards were exported in 1882.
For one yard exported in 1873 from Great Britain and Ireland 45¼ inches were exported in 1885.
For one yard exported in 1873 from the United States 10⅔ yards were exported in 1885.
For one yard exported in 1873 from Great Britain and Ireland 50 inches were exported in 1886.
For one yard exported in 1873 from the United States 14 yards 2½ inches were exported in 1886.

I think that shows clearly the nature of the competition we have to meet. In my opinion it is but beginning. As I mentioned just now, in the United States there is little or no conflict of interest between the manufacturer and the merchant, they are, so to speak, in the same boat, and therefore they are making always a better quality; whereas the tendency of our system is to work down to the lower qualities.

3275. You gave us the total figures of the United States in those two years, 1873 and 1886; can you give us the total British figures?—In 1873, there were sent out from Great Britain 3,482 millions of yards. In 1886 the exports from Great Britain were 4,850 millions of yards, or an increase of 39 per cent.

3276. But, still, our total increase during that period is more than the total amount which America now sends?—Our increase is just about the same as their total amount. What is surprising about America is the rapidity of the increase.

3277. (*Earl of Crawford.*) They have made their business in a short period of time?—Yes. The quality of goods sent from the United States, as I said before, is very superior. That we meet with every day. Take the article of drills. Mr. Hutton will be acquainted with the quality of American drills. They are sold in China at a higher price than can be obtained for English drills. The natives have so much confidence in the quality, and length, and weight of American goods, that they command a higher price than can be obtained for English goods.

3278. (*Mr. Hutton.*) There is a preference given to the American goods from the quality of the cotton and cloth?—Yes, and its superior manipulation. The quality of the cotton is good, but the manipulation—the manufacture—is really very excellent. I say that as a practical man, knowing the merits of a piece of goods when I see it.

3279. Are these American mills making money at the present time?—I do not know.

3280. They undersell the British goods?—I mentioned a case where they oversell them. They get more money per piece for their drills.

3281. In the same markets where the American goods are sold is it not the case that they undersell the English goods?—I am not acquainted with that as a regular thing. Americans have at times taken very low prices when their stocks have been heavy, but I have known cases where their prices have been 10 per cent. higher than goods of English make. They had sold their stocks, and the prices were put up in consequence.

3282. (*Chairman.*) Will you suggest what is the bearing of this on our particular inquiry?—I think it is of national importance that those who produce the article should be able to put some mark upon it by which it may be known. I think that our technical schools, and the advance we are making in skill, will be to a very large extent thwarted unless those who invent and produce gather the fruit of their own skill.

3283. What is to prevent them doing that now?—I think Parliament should make it quite easy for any person to take out a patent for an invention, or to register any article that he produced, and that there should be no authority between the State and the inventor. The suggestions which Mr. Bailey, Mr. Dehn, and Mr. Fulda made to the Chamber of Commerce in Manchester would, in my opinion, tend to fix what cannot and ought not if it could be fixed. Trade is changing so rapidly that the old state of things is passing away. We are in a completely new set of circumstances. If registration of trade marks were in London under the charge of a competent officer, and there were in the different centres of manufacturing industry offices where there could be kept duplicates of the marks registered—say at Manchester, Bradford, Nottingham, Glasgow, or elsewhere, where every mark could be inspected by those who wished to take out a new design—I think that would encourage the best kind of manufactures, and I think that by-and-by merchants would take a pecuniary interest themselves in manufacturing concerns. They would seek out superior makes in order that the sale of them might be confined to their houses.

3284. (*Earl of Crawford.*) Your object would be to get rid of the profit of the middleman?—I do not object to the middleman as such. The rapidity of communication between country and country has displaced a great many middlemen, and will displace more, but the middleman will always be wanted. What I desire is that the middleman and the manufacturer should have one interest and one interest only. What I do object to is the attempt on the part of middlemen to obtain control of the administration of an Act of Parliament. I think it would be very injurious to the trade of the country.

3285. That hardly agrees with what you said with

Mr. I. Hoyle, M.P.

20 July 1887.

regard to this heading; that in registering a heading you did not wish the retail purchaser to know who the manufacturer was?—I did not say that that was my wish; it is the wish of the merchant.

3286. Therefore it is the desire of the middleman?—Yes.

3287. (*Chairman.*) I suppose because he is afraid that the goods might be ordered direct?—Yes, we have tried to meet the wishes of our customers in that way by our system of registration. We have always declined to put one man's heading on to another man's order. Frequently it has happened that a private heading has been brought to us with a request that we should put it on a certain cloth, and our answer has been that it was "reserved" for So-and-so. We have been met with: "Oh, well, it is common "enough; that heading can be had anywhere." The result has been that the order has gone elsewhere, so that that particular heading might be put on. We have sacrificed our interest in order to protect, as we thought, our customer. The proposal to set up a Committee of assessors in Manchester, is, in my judgment, contrary to public policy, exceedingly injurious, and if carried out would be fraught with peril. My firm are merchants as well as manufacturers, having travellers, and travellers continually send home patterns of what they meet with—what is in demand. Such patterns received by persons who were members of a committee of middlemen would, provided they were not scrupulous, just enable them to sail as near the wind as possible; whereas with a registrar appointed by the Government and responsible to the Government and the Government responsible to Parliament, there would be no inducement to favour any one class at the expense of another. This is what Lord O'Hagan said in an appeal case before the House of Lords:—

"But the proceeding of the Manchester Committee is "*ex parte*. The person claiming the mark is not "allowed to be present or to assert himself in any "way; and if he is to be concluded by an opinion "formed in his absence and without his intervention, "very serious injustice may manifestly result. The "committee consists of persons versed in the usages "of the cotton trade. Its members require no other "qualification. They may not be gifted with any "special capacity to decide correctly, even though "they may wish to decide fairly and honestly. I "cannot conceive any judgment of anybody more "likely to require such revision and rectification than "one pronounced *ex parte*, without publicity, with-"out discussion, and deriving its sole security for "correctness from the knowledge possessed by those "pronouncing it of the usages of a particular trade."

3288. That you adopt as an expression of your opinion?—Yes, if I might venture to say so, I quite agree with Lord O'Hagan's judgment in that case. May I here correct an answer that I gave about the number of marks adjudicated upon by the Committee of Experts appointed by Lord Cairns. Question No. 1582. The Committee of Experts placed 4,538 marks in the A. list, and 44,158 in the B. list. There were removed from the B. list by order of the court 634, and removed from the B. list by the registrar 83. In answer to another question I stated that Mr. Cheetham was the only manufacturer on that Committee of Experts. I have got the names here, and I repeat that to-day.

3289. It was suggested that you were mistaken, but you say, looking at the names, you were not?—Yes, with the official document before me I wish to say Mr. Cheetham was the only manufacturer on the Committee of Experts, and he was 75 at the time. May I say also that in the list of suggestions made by Mr. Bailey, Mr. Dehn, and Mr. Fulda were these that "it should be enacted that excepting the names "of firms, registering all words, whether English or "foreign, cautions, line headings, borders, mottoes, "monograms, letters, figures, names, and personages "should be required to be disclaimed by the appli-"cant." I object to that altogether: I think the principle is wrong. I do not think the responsibility of the registrar should be lightened in that way. It seems to me that the principle of refusing all marks "calculated to deceive" should be enough. All restrictions of this kind lessen his responsibility, and I think he ought to be made thoroughly responsible for a mark not being a fraudulent imitation of another.

3290. (*Mr Hutton.*) Are you in favour of the registration of all words?—No, I am not in favour of registration of anything—words or anything else, if they are imitations, or so near imitations, as are "calculated to deceive."

3291. But I mean of words?—I would throw the entire responsibility on the registrar.

3292. (*Chairman.*) The suggestion was made that in the cotton classes a word should not be a good subject of registration at all; what is your view about that?—I am inclined to think it may be abused, but at the same time I myself wish the restrictions to be as few as possible, and the wording of the Act to be so general, as to make the Government official responsible for his acts.

3293. And to leave people to choose their own mark at their own risk?—Yes. The principle of the Act of 1883, and the Act of Lord Cairns, it seems to me, is invaluable. It operates thus: the applicant sends in a mark for registration. If the Registrar approves, the mark is sent down to Manchester and is on view there and in London for three weeks, so that all interested persons can go and see it. If there be no objection, it is registered in due course, but the owner does not obtain an absolute title for five years, and during those five years the mischief would come out in trading, if there were any, and the person injured could get the mark removed. Now it seems to me that that is a perfectly safe and sound principle, and that any interference with it otherwise than by its extended application in the opening of offices of reference in the large towns of Great Britain and Ireland would be adverse to the interests of every great trade in the Kingdom.

The witness withdrew.

Mr. HENRY READER LACK re-called, further examined.

Mr. H. R. Lack.

3294. (*Chairman.*) What are the points which are still left open?—There are two or three little points I wish to mention. With regard to the tin-plate marks, I omitted to say that those have been treated as brands. We found it had been the custom of the trade for very many years to employ word marks, and it was the only way we could bring them in under the Act.

3295. Do you see any reason for keeping up the distinction between brand, and design or mark?—No, I do not think so.

3296. A brand is only a mark?—Yes.

3297. Originally it was a mark burnt in?—That is all.

3298. But it is a mark, and it would rather seem to lead to confusion to deal with brands as if they were separate things?—Yes. If geographical words are refused the tin-plate trade will have to change their marks. Although that would not be of very grea importance in this country it might have some injurious effect on the trade marks abroad.

3299. Why are geographical names permissible to the tin-plate trade under brands any more than to anybody else under a mark? The practice of your office has been to allow it?—Yes.

3300. But the decisions with respect to marks would seem to be applicable to brands, would not they?—I think so. Of course there was a special provision as regards old marks. They were allowed.

Mr. H. R. Lack.

20 July 1887.

3301. You would think then it would be expedient if we altered the definition of a fancy word and made it clear that you cannot be allowed to use a geographical name, saving all marks already registered?—Yes. The question is, what savings, if any, the committee would think should be inserted; because many marks which have been used since 1876 and since 1884 have acquired a value, and many thousands of pounds have been spent on them. If they were rejected it would be a great loss to the owners. Then I had a letter from Mr. Oscar Behrens with reference to marks used in the tobacco trade. He wished to suggest that in applications for marks or labels for tobacco, or to be used in the tobacco trade, the applicants should furnish a declaration stating, wherever a name and address appears, that the name and address were really true and correct. At present of course I have no power to go beyond the marks deposited.

3302. There was a case that occurred the other day where the court refused all protection to a man who alleged that another person had been selling cigars representing them, by a colourable change of description, as if they were his. They refused protection on the ground that he himself had falsely described them as made in "Havana" by a certain person, there being no such person and no such street in "Havana"?—Yes, they put a Spanish name and address, and "Havana."

3303. (*Baron Henry de Worms.*) That is the custom now?—Yes.

3304. Is it not the custom to put on cigars that are not made in Havanah at all, but in Whitechapel, the brand "Havana"?—I believe so, but without any definite address. They do not put the number of the street, but they put the street and "Havana."

3305. Is it alleged when they put the name "Havana" that that is to be taken as a trade description and not as an indication of origin?—I think it is taken as a description of origin.

3306. (*Chairman.*) I suppose if they put "Havana" only it might possibly be said to be a description of the character of tobacco?—Yes.

3307. But if they put the name of a street in Havanah I do not suppose anybody can doubt that they put it because they intended it to be believed that they come from that street?—Yes.

3308. (*Baron Henry de Worms.*) The allegation of the trade, as stated before the Select Committee, was that they choose to consider "Havana" simply as a trade description, and not as an indication of the place of origin?—I should say not.

3309. (*Mr. Hutton.*). What does a "Londres" mean?—That is a description of a cigar of a certain shape.

3310. (*Baron Henry de Worms.*) Would you, now, at the Trade Marks Office, register the word "Havana" supposing it were combined with a signature?—Yes, certainly, or on a label.

3311. Then, without inquiry into the origin of the cigar, with which you have nothing to do, a cigar maker in London bringing you a brand with "Havana" on it you would register it?—Yes.

3312. (*Mr. Hutton.*) Though a false and fictitious name?—Yes.

3313. (*Baron Henry de Worms.*) In point of fact, the Board of Trade, not willingly, but by their practice, recognise what is actually a fraud?—Yes.

3314. Mr. Morris, who gave evidence before the Committee, maintained that it was not in the least degree a fraud, because it was capable of registration by the Board of Trade office?—Yes. There is another practice which has arisen lately of persons registering their marks in a great number of classes, although they do not use them. For example, some soapmakers, in order to prevent people getting their mark in other classes, apply to register, and I have no means of stopping that. If that is carried on to any great extent it would be a return to the old system of having a trade mark right to cover all goods, and to defeat the new system of registering for classes.

3315. (*Chairman.*) I do not see how you can help it?—I thought I ought to mention it.

3316. (*Mr. Hutton.*) Then they pay a fee for every class?—Yes. The question is, whether a provision should be made that if it is not used it can be taken off, unless it is used in business connected with the goods in the class.

3317. (*Baron Henry de Worms.*) Take the case of Whiteley, "The Universal Provider"?—He does use it.

3318. He registers the word as his trade mark?—Yes. They do not make any hesitation in telling you they are not going to use it.

3319. With regard to Whiteley, do you mean to say that for every individual article on which that mark is affixed, supposing it to be a different class, the office would receive a fee?—Only for each class. There are 50 classes.

3320. There is nothing that he does not sell?—No. One registration would cover 100 articles in a class. He has to pay not more than 50 registration fees. There is one other thing I should like to mention. *This* is the mark to which Mr. Whittle alluded the last time with reference to the question, what does an ordinary Englishman know. (*Handing in two marks.*) It is a point of difference between Mr. Whittle and myself. I should take that second "Aurora" mark, notwithstanding the first one. I should not say there was any calculation to deceive. I do not think an ordinary tradesman or person would mistake one of those for the other. *This* is "Aurora" and the other is "Aurora" in Greek, and Mr. Whittle thinks one ought to stop the other.

3321. (*Baron Henry de Worms.*) I should not think one would be mistaken for the other?—It is a question of interpreting the Act.

3322. What is it used for,—soap?—One is for a lantern, I think. Lord Justice Lindley says the Act of Parliament is for an ordinary Englishman.

3323. (*Chairman.*) That is not so, is it, because it recognises the fact that goods are to be sent abroad?—It is a question how far I am to stop marks for use in foreign markets.

3324. Registration would be worth very little if you were to allow the registrations so to resemble one another as to be calculated to deceive. It must be in each case a matter of discretion really?—Yes; of course the great difficulty is the practical application. Two or three or a dozen people may agree in theory, and they would carry out the Act in a different way, and therefore it seems to me, in order to give the public a chance, it ought to be worked by one person, and then they would know where to have him.

The witness withdrew.

Adjourned.

APPENDIX.

TRADE MARKS AND DESIGNS INQUIRY COMMITTEE.—LINE HEADINGS.

Ralli Brothers,
Peter Street, Manchester,
6th May 1887.

DEAR SIR,

I AM in receipt of your letter of the 3rd instant, written by direction of Lord Herschell, and, according to the request therein contained, I would offer the following observations upon the evidence given before the Committee on the 30th April last, by Mr. Isaac Hoyle, M.P., upon the registration of line headings.

It would be as desirable that manufacturers and merchants should be able to register distinctive line headings, as it is to register, under a well administered system, representations of distinctive objects as trade marks. But speaking from my personal knowledge of the infinite variety of headings made in Lancashire, it will, in my judgment, be found impracticable to overturn the decision arrived at by the committee of Manchester experts when dealing with the headings in use prior to the passing of the Act of 1875, viz., that the 11,000 headings which the trade had then sent in, could not be recommended for registration as trade marks,

In the deposits of the 11,000 headings just referred to, were included very few headings out of the many hundreds of headings which my firm used, because we regarded it as impossible to draw any line between one heading and another when the whole series would come before the experts and the Commissioners of Patents. The few headings which my firm did send in were associated with quality numbers and other marks, which we supposed might be accepted for registration as "combination marks." But in addition to line headings my firm sent in several hundred designs of flushed borders, woven into the selvages of grey and bleached goods, which we hoped would be passed for registration, because they consisted, not of lines and stripes, but of actual designs in coloured yarns of flowers, animals, birds, and the like; but all these were thrown out by the Commissioners of Patents as incapable of registration, Illustrations of this class of flushed borders were sent at my request from the Copyright of Designs office, and they were referred to at the close of my examination before the Committee, on Saturday the 26th March last. If then, original specific designs such as occurred in these flushed borders were rejected as trade marks, it must needs follow that an arrangement of simple coloured lines is much less adapted for registration, and, in my opinion, the idea is chimerical. The universal decision of practical men would be against the possibility of registering line headings. See the Manchester Chamber of Commerce Report for 1886, pages 41 and 55. When there is design in a heading produced other than by straight lines, as in woven jacquard or flushed headings, or as in floral, conventional, and other designs impressed upon the piece as stamped headings, or printed as labels on paper, it is capable of registration when it is distinctive.

Mr. Hoyle's reply to question 1548, that no heading is entitled to protection unless it is distinctive, is perfectly sound. But the difficulty will be found to lie in determining what is really distinctive. If the headings in use at the present time were arranged in linear series, and submitted to Lord Herschell's Committee, all hope would be abandoned of obtaining anything sufficiently distinctive to warrant registration. I am afraid, however, that I do not fully understand Mr. Hoyle's idea of a "distinctive" heading, inasmuch as from the answer to question 1533 he speaks of the 2,412 headings belonging to his firm as being distinctive to his firm "*and to everybody else* who deals in the article."

Very many more than 11,000 headings could have been deposited in 1875 if there had been any expectation amongst merchants and manufacturers that headings could be registered; large numbers of users of extensive varieties of headings considered it useless to make any deposit of same. The subsequent number of headings has greatly increased, and they are constantly being modified. Mr. Hoyle's own firm (answer to question 1498) have 2,412 headings on their own register; I am told that the firm of Messrs. Smithson Brothers have 6,000 line headings filed in their books as made by them at one time or another; and I believe that if the total number of line headings in use in the cotton districts could be ascertained, the mere citation of the number would be sufficient to convince the Committee how impossible it would be for competent experts to find sufficient distinction for registration purposes from any arrangement of mere stripes and lines, whatever might be the combinations of colours, or of materials used. And if Manchester experts are unable to separate them, it is certain that the Trade Marks Office would fail in the same task.

I will now refer to the uses of headings. Like Mr. Hoyle, in question 1495, my firm, after taking every possible precaution to design a line heading which should be distinctive from that of every other merchant or manufacturer, introduced it in the year 1864 as a trade mark, and applied it to their numerous qualities, widths, weights, reeds, &c., of grey shirtings, and madapollams. To make it clear to all concerned that this private heading was being used as a trade mark, each heading was stamped with the words "trade mark" across it, and each manufacturer who made it for us entered into an undertaking not to make it, nor any colourable imitation of it, for any of our competitors. For some years it held its ground, but other headings introduced by other firms came little by little to be so nearly like it, that it ceased to be of use as a distinguishing trade mark, and though we still continue to employ the heading, we have long since omitted to stamp the words "trade mark" across it. Headings still have their primary use of showing that nothing has been cut off the ends of the piece (answers 1488 *to* 1490); but they also serve for the ornamentation of the piece, and in this sense, merchants and manufacturers are obliged to put them on the goods so as to conform to their customers' wants. Mention has been made of the cost of applying these headings (answers 1511, &c.) to goods, but merchants really pay for this ornamentation in the same way as they pay for the additional, and often far more costly, ornamentation of the goods by labels, gold stitching, and the like.

From the answer to question 1534 Mr. Hoyle does not seem to be aware of the universal Manchester practice that the same heading is used on the most diverse qualities of cloths. Merchants and manufacturers apply the same heading to the most widely separated qualities; for instance, in grey shirtings the common "red ends" and the equally common "golden ends," exported in such immense quantities to the East, are used upon open flimsy light cloths and upon stout heavy cloths made in much higher reeds. "Green-end mulls" is a term in universal use for the lower as for the higher reeded grey mulls; the "lilac jacconett heading" is put upon 8 × 6 and 16 × 16 (ends to the quarter inch) grey jacconetts; and in T cloths the headings known as "five reds," "two pinks," and "two lilacs" are used by every merchant and manufacturer who deals in them, irrespective of quality. As regards the answer to question 1509, it is not within my experience that the use of any heading implies a definite width, length, or weight, and it is the first time I ever heard of such a circumstance.

Excepting for an extremely limited number of goods, either exported or made for the home trade, my experience of the Manchester market suggests that manufacturers are never known by their headings, as is suggested by question 1536.

In the answer to question 1537 a principle is advanced which, in my belief, is at once incapable of application and entirely novel to the practice of the trade, viz., that the registration of a line heading should be granted on the ground of the superiority of the quality of the cloth to which the heading is applied. The Trade Marks Office would have a serious difficulty to determine the distinctiveness of any line heading per se, but the difficulty of their deciding upon a trade mark would be immensely intensified if they had also to enter into the question of quality of cloth; the mere statement of the principle will ensure its condemnation.

In answers to questions 1501 to 1505, colour is recommended as a distinguishing quality of a heading in registration. But colour is a very uncertain element upon which to found distinctions. It is impossible to keep the colours of dyed yarns uniform. In my experience as a buyer of large quantities of goods in which coloured yarns are largely employed, I find that even when manufacturers have a standard shade to work to, it is a common circumstance to mis-match the shade. In a fixed shade of green, for instance, manufacturers have frequently used all shades from a dark indigo green, scarcely distinguishable from dark blue, to all shades of chrome and aniline greens. Yellow, which is referred to by Mr. Hoyle in answer 1531, is a colour largely used in the cotton trade, in canary, lemon, amber, orange, and buff shades, and is nearly as variable as green or pink, and at gas-light, when weaving is going on in many mills, the various shades of yellow are indistinguishable. Few dyers produce uniform shades, and the fact that one person in every fifteen of our population fails to distinguish shades of colour, while many are absolutely colour-blind, shows how uncertain it would be to depend on colour. Not only so, two different weavers cannot put in the same shade of colour so as to produce an identical result, because the coloured yarn is, as a rule, knocked closer together by hand than is the rest of the cloth, and weavers vary in their ability to "knock-up." Again, the counts of coloured yarn are not uniform, so that it is possible with 10 picks of a coarse yarn to produce a similar effect to 15 picks of a finer yarn. As the coloured yarn is put across the grey warp, its effect is governed by the thickness of the grey warp, so that precisely the same number of picks put into a fine cloth will be quite unlike the effect produced by the same number of picks of the same coloured yarn put into a coarse cloth.

I do not regard the materials used to produce variations in effects in headings, as suggested by the answer to question 1500, as of much practical value. Cotton can be made to look like silk and worsted. I have seen jute made to look so like worsted and silk as so be indistinguishable from it except on minute investigation.

A further objection to the registration of line headings lies in the fact that weavers cannot use their materials with precision of breadth of the various stripes, and they would lack a characteristic of a valid trade mark, viz., constancy or uniformity, but line headings are variable, as they depend upon eye, counting, and manual labour.

As regards line headings being registered under the Designs Act rather than the Trade Marks Act, as suggested by question 1519, I should say that they are unsuitable on two grounds, viz., that mere parallel lines would not constitute a design; and that protection to a design registered under the Designs Act is valid for three years only, after which the registered design becomes public property. This is, in part, the reason why my firm sees no advantage in registering under the Designs Act their numerous flushed border designs, as I explained to the Committee in my evidence on the 26th March last.

I gather from your note of the 3rd instant that Lord Herschell wished for my personal opinions only, but I am sure that my colleagues on the Trade Marks Committee of the Chamber of Commerce will endorse the substance of this letter if Lord Herschell should desire it, and it might be advisisable to do so, as the Manchester evidence was tendered on public grounds.

I return the copy of the printed evidence of questions 1479 to 1551 herewith.

Yours faithfully,
CHARLES BAILEY.

Edward Roscoe, Esq.,
Secretary to Lord Herschell's
Committee on Trade Marks,
Board of Trade, Whitehall, London.

Manchester,
7th May 1887.

DEAR MR. ROSCOE,

IN acknowledging the receipt of your letter of the 3rd May 1887, handing me evidence taken from Mr. Hoyle on the subject of line headings, and asking me by direction of Lord Herschell for any observations or suggestions I may have to offer to the Trade Marks, &c. Inquiry Committee, I would say:—

Messrs. Joshua Hoyle & Sons, Limited, sent in only eight old trade marks to the Manchester office, seven on the 21st November 1876, and one on the 28th January 1879. Of these eight marks only one—that deposited in January 1879—contained a heading. This mark bears the Manchester number, 40,543 M.; was passed by the committee of experts into the second class, and will be found on page 146 of Vol. 140 of the B list in Class 24. Afterwards, in May 1880, this mark, under the Registrar's No. 910, was proceeded with by order of the court (No. 62), and eventually registered (*see* Trade Marks Journal, No. 213, page 68, February 16th, 1881), the representation papers not bearing any disclaimer.

(In connexion with the advertisement here of this mark —*see* Trade Marks Journal, No. 210, page 20, 5th January 1881—I believe the Bleachers' Association made strong representations to the Registrar against the registration of the three-flag device.)

References to the reading of the heading in this mark will be found in Vol. 12, pages 99 to 127 of the B list in Class 24, and other headings bearing a resemblance thereto, more or less close, may be met with in Vol. 30, pages 182, &c.; Vol. 39, page 148; and Vol. 14, page 179 of the B list.

I may here add that there are about 10,000 headings in the B list, Class 24, but this evidence must be considered incomplete, inasmuch as I understand very many line headings were not deposited owing to the belief that such were not capable of being registered.

The committee of experts in dealing with line headings discussed the question at several meetings, and it was only after repeatedly attempting to find a basis for dealing fairly with the question that the resolution of the 29th March 1878 was passed at a special general meeting of the committee; a copy of this resolution is attached hereto. Subsequently, in view of an official letter of the 25th November 1879 (as per copy herewith), I called together a number of gentlemen—merchants and manufacturers—interested in the question of headings, and placed before them a comprehensive series of such marks, selected from those contained in the various group arrangements of the deposited heading marks. The result of this meeting held here on the 11th February 1880 is also attached hereto.

Following this decision I had an interview with Mr. Lack in London, on the 20th February 1880, when he informed me the Commissioners of Patents accepted the views held by the trade; and the official instructions afterwards received with regard to the examination of line headings were as follows: "Headings (line) to be disclaimed by applicant; no examination necessary."

I may further say that as a result of an inquiry made here in April 1877 in regard to a proposed silk heading for Class 24, the following official decision was received:—

"As to the silk heading, the Trade Marks Registration Act does not enable this office to give any protection for the material of which a trade mark may be made no more than for the paper in which a packet of goods may be made up. The mode in which goods are packed, whether a mark is impressed on glass, or wood, or in cases, may all amount to important indications to the public, but do not constitute trade marks within the provisions of the Act."

Again, in reply to an inquiry made in 1880 by a manufacturer, the following extract is taken from the official letter:—

"I am to add that in the opinion of the Commissioners brilliancy of colour cannot be considered in the case of new headings."

In connexion with the shades of colours in line headings consisting of more than one colour, I would add that in solution of the great difficulty experienced in grouping them, it was fully explained to the committee of experts at the time that the system adopted was to include blues, blacks, and purples, under one head, and reds, pinks, and mauves, under one head.

I am, dear Mr. Roscoe,
Yours very truly,
Edward Roscoe, Esq. (Signed) JOSEPH FRY.

HEADINGS.

Resolution of Committee of Experts, 29 March 1878.

"That owing to the great difficulty of coming to any decision whatever as to the merits of woven headings, the committee of experts have felt themselves compelled to place all woven headings in the second class. Printed headings having a distinct character or design will be treated on their individual merits as trade marks."

Office of Commissioners of Patents,
Trade Marks Registry Office,
London, 25th Nov. 1879.

SIR,

THE Commissioners of Patents being of opinion that distinctive headings must be accepted for registration as *new marks*, it will be necessary for you to cause an examination of the *old* headings deposited at the Manchester branch office, to be made with the view of ascertaining the num-

ber of private headings which were in use at the date of the passing of the Trade Marks Registration Act, 1875.

I am returning by rail the whole of the new headings which have been applied for since the passing of the Act, in order that they may be similarly examined, and subsequently compared with the *old* private headings above referred to.

In comparing the *new* private headings with the *old* private headings, you will bear in mind that only *distinctive headings* can be accepted for registration as new marks, *i.e.*, such headings as would not from their so closely resembling old private heading be calculated to deceive.

I am, Sir,
Your obedient servant,
(Signed) H. READER LACK,
Registrar.

J. Fry, Esq.,
Manchester.

HEADINGS.

Decision of Merchants and Manufacturers, on the question of Line Headings, 11 February 1880.

All headings formed simply of coloured stripes are to a greater or less extent imitations one of another. The extremes taken by themselves appear distinctive; but there are so many intermediate and connecting links, that it is impossible to class any one as distinctive. The onus of proving title to applications for new marks consisting of striped headings should rest entirely with the applicant.

TRADE MARKS AND DESIGNS INQUIRY COMMITTEE.

47, Newton Street, Dale Street,
Manchester,
May 13, 1887.

DEAR SIR,

I HAVE received from Mr. Charles Bailey your communication of 9th instant, addressed to him, and informing him that Lord Herschell desired him to communicate with me, in order to ascertain my view on the contents of his letter of 6th instant, of which Mr. Bailey has kindly handed me a copy.

Mr. Bailey has exhaustively treated the question of registering line headings as trade marks, and I fully agree with his arguments.

Although I believe that any additional evidence might almost needlessly take up the time of the committee, I beg to add some confirmatory evidence on certain points, in case the Committee might wish to see these. According to Mr. Bailey's letter, Mr. Hoyle has stated in evidence that headings indicate distinct qualities, and that they should be registered on the ground of the superiority of quality. From my own experience, I may state that both these arguments are new, that identical qualities are ordered by buyers with varying headings, and I am forwarding to you three patterns, marked No. 1, No. 2, No. 3, all of them showing the identical quality.

Pattern No. 1 and pattern No. 2 are bought, as the stamp proves, by the same buyer with different headings, pattern No. 3 is the same cloth bought by another buyer, who does not wish his goods to show the exact heading of his neighbour, since he wishes to avoid close and unnecessary competition.

Patterns No. 4 and No. 5 show the same heading as No. 2, while 2, 4, 5, show three different qualities.

The patterns Nos. 2, 4, 5, which are all intended and ordered to have the same heading, illustrate further Mr. Bailey's argument that different weavers do not produce the same result, and vary in their ability to "knock up" the coloured yarn in an exactly equal manner. This is also shown by patterns Nos. 6 and 7, No. 6 showing a much wider heading than Nos. 7, although patterns Nos. 6 and 7 are taken from one and the same delivery of one and the same cloth. I may add that in one and the same delivery it is difficult to find two headings identical in every respect, thus constituting an insuperable difficulty in making so variable a character the groundwork for registration. Pattern No. 8 again shows the same heading as No. 1 on a different make of cloth from a different manufacturer.

Patterns Nos. 9, 10, and 11 show the same quality as Nos. 6 and 7, which quality is thus represented in four different headings.

The point shown by these patterns is, therefore, that different headings are used for the same quality, and that the same heading is used for many distinct qualities.

I believe these patterns will further illustrate the impossibity of determining whether the registration of a line heading should be granted on the ground of superiority of quality. The Registrar would undoubtedly have some difficulty in determining which of the cloths is the most valuable, nor would he find it easy to say whether the threads used to make the headings are all cotton or all worsted.

Although I have long experience of the requirements of nearly all markets, and have had occasion to hear the opinions of a large number of manufacturers and merchants, the opinion expressed by Mr. Hoyle with regard to line headings stands alone, and is in direct opposition to what I may call the established opinion of the trade.

Though it must be the natural desire of every individual merchant to create a speciality, I have not come across any desire to rely upon a heading as a trade mark, except in the case of Mr. Hoyle, which I have myself brought before the Committee in my evidence of the 23rd of March.

Although I am expressing my individual opinion in connexion with Mr. Bailey's arguments, I have no hesitation in saying that the whole trade would gladly endorse these views.

I should deem it a favour if you would kindly return to me, after perusal, the 11 patterns referred to, and which I am sending you under separate cover.

I am,
Dear Sir,
Yours faithfully,
RUDOLPH DEHN.

Edward Roscoe, Esq.,
Secretary to Lord Herschell's Committee on Trade Marks,
Board of Trade, Whitehall, London.

Manchester,
May 13, 1887.

DEAR SIR,

REFERRING to your letter of 9th instant, addressed to Mr. Bailey, I have read his report of 6th instant, which goes so fully into the question of headings, and I entirely agree with him as to the impracticability of registering line headings. The only additions I would make to his report are as follows: The shades of colours, the width, and the number of stripes in line headings can be varied in so many combinations that, if registration were allowed, it would, in my opinion, produce great confusion, as it is often very difficult or impossible to judge whether one heading is meant to imitate another, and, if not, whether it might be considered a colourable imitation.

Colour has never been admitted in any style of trade marks as a special feature for registration, and were colour to be considered as such a feature, trade would be, as far my judgment goes, hampered to an insupportable extent.

I enclose four patterns which I received from a firm of manufacturers, who also act as agents to manufacturers, showing not only similarity of headings, but also that the same heading is used for several qualities, say,—

No. 1 for 2 different qualities.
2 „ 4 „ „
3 „ 5 „ „
4 „ 10 „ „

Although headings are not registered, manufacturers and agents will frequently engage to confine special headings to certain merchants in order to promote business, but such private arrangements do not prevent imitations in other quarters.

I am,
Dear Sir,
Yours truly,
(Signed) S. A. FULDA.

E. Roscoe, Esq.,
Secretary of Lord Herschell's Committee on Trade Marks,
Board of Trade, London.

PATENT OFFICE.

With reference to Sir Thomas Farrer's inquiry as to why the proposed restriction of the present practice with regard to word marks should not be made to apply to the non-cotton classes, I would submit the following considerations.

Whatever limitations may have dwelt in the minds of the framers of Section 64 of the Act, a whole series of decisions in this country show that dictionary words used in some fanciful combination, suggesting some out-of-the-way, absurd, or even offensive contrast, have become most

valuable signs associated with a particular business. Words like "Ozokerit," "Aeilyton," "Linoleum," "Euxesis," and other invented names have become very valuable properties, owing to the popularity of the inventions with which they are associated; but the real test of a word trade mark is the impression it makes upon the memory, and a fantastic application of an ordinary word is, in this view, a better trade mark than the most ingenious barbarism which a study of foreign languages could supply. In view of these decisions and the trade wants which they indicated, the Board of Trade considered the question on the 22nd of February 1884, and again on the 28th day of January in this year (see copies of the directions then given), and they concluded that the definition of fancy words, or words not in common use, ought not to be taken strictly, but that any words not descriptive of the goods, nor ordinarily used in connection with the goods, might be accepted for registration. In accordance with this view, a name of an individual in the possessive case followed by the name of the goods has been accepted for registration, if no maker or vendor of a similar name was registered in the class. Other words which would be descriptive in one class have been accepted as special and not in common use in connection with the name of the goods in another class, as, for instance, "corrugated," which would be descriptive of metal or of any other material of continuous surface, has been accepted as a fancy term, with the addition of the word "flour."

So as regards the names of places, "Persian thread" (for thread), "Ethiopian stockings" (in the hosiery class), "Mexican Balm" and "Eau Athénienne" are well-known and valuable trade mark properties. "Turin," "Sefton," "Leopold," and "Liverpool" have all been recognised by courts as valuable signs of particular businesses, and in America the courts have gone even further in their recognition of ordinary words as associated with commercial enterprise.

The carrying out of such a practice is undoubtedly a matter of great difficulty. It is not easy to explain to one applicant the reason why a mark which seems to him a happy flight of fancy is refused, while popular marks have been accepted for their owners on special grounds connected with the nature of their goods or business; but controversies would necessarily arise even with the most restricted application of the section. The words "Ozokerit" and "Aeilyton" are strictly descriptive of the goods to which they are respectively applied, but owing to the unacquaintance of the general public with the origin of the words these marks have their value as preposterous combinations of letters.

With perseverance and trouble there is, therefore, a fair prospect that the practice adopted by the Board of Trade for the last year may be found serviceable to the public in the non-cotton classes.

The difficulty about the cotton classes arises from this: that marks in these classes are really for use, not in the United Kingdom, but in remote parts of the world; and such marks must depend for their value principally on devices, something which can be taken in by the eye, irrespective of any knowledge of letters. In this view there is a considerable case to be made in favour of the view of the Chamber that registration of fancy words in the cotton classes ought to be specially treated, as words are only used in practice as the names of particular devices. An example occurred the other day where the representation of a Chinese soldier with certain Chinese characters on his shoulder was claimed as a trade mark. The application was refused in view of a similar representation of a Chinese soldier registered for an important house. The applicant then sent in a claim for the Chinese characters, which application was also refused as being simply a claim for Oriental characters. He then sent in a claim for the word "Yung" in European type as a fancy word, this word being the Chinese word for soldier.

It is a question, however, whether the object of the Chamber of Commerce would not be attained by restricting the use of words in Classes 23 and 24. Class 25 is also a cotton class, but the goods in that class are chiefly for the home market.

I may mention further that in a recent case Mr. Justice Pearson has decided that the word "National" followed by the name of the goods was entitled to protection.

(Signed) J. L. WHITTLE.

27th April 1885.

(Ind., H. R. L., Comptroller.)

DIRECTIONS of the BOARD OF TRADE given on the 22nd February 1884 as to accepting the following as "fancy words."

	"Every class" for watches	"Every class" for watches may be accepted.
	"Natural boots"	"Natural boots," refused by Comptroller, should be refused.
34823	"Second to none"	"Second to none" may be accepted.
34796	"Champion" for boxing-gloves	Also "Champion" and "Unique," but Whiteley's "Universal Provider" should be refused.
35562	"Unique"	
35243-9	"Universal Provider" (Whiteley).	

DIRECTIONS of the BOARD OF TRADE given on 28th January 1885.

In reference to Mr. Calcraft's direction of 22nd February 1884, the following cases of fancy words are submitted as illustrating the practice then adopted and the questions since arisen.

Applications accepted.

Eyciclette, for bicycles	Approved.
Bazaar teas	
Flexora, substance for food	
Mustardyne, for mustard	
Odontoline, for toilet preparations.	
Curdaline, for soap	
Pic-nic, for corsets	
Sunshine, do.	
The domestic tea	

Applications pending:

"Society," for stationery	Better to require applicant to prefix "the" or add name of goods.
"Eyeletto securo"	Refuse.
"Corrugated," for flour	Refuse without "the" or name of goods.
"Sapo Rusci"	Refuse, as oleum rusticum, of which rusci is an abbreviation in the Pharmacopœia, is descriptive in the class.
"Metalline," for bricks	Accept.
"Chlorozone," for washing preparation.	Accept.

In such cases whenever the word is a dictionary word, as Fairy Apollo (?), and not evidently a fancy word or the name of a place, the *article* or the names of the goods or both should be added, unless in special cases, where the association of the word with the particular goods suggests some novel and distinct idea.

	"Haydn," for musical instruments.	Prefix "the."
	"Abbey," for clocks and watches.	Do.
	"Wyvern"	Do.
	"Salisbury"	Do.
	"Victoria Square," for biscuits	Add "the" or goods.
	"Handy," for soap	Prefix article.
41828	Case on hearing suspended for further consideration.	Refuse.
41723-4	Ditto	Refuse.

DRAFT DIRECTIONS OF BOARD OF TRADE.

COUNCIL CHAMBER, WHITEHALL.

Present: Baron Henry de Worms, Sir Thomas Farrer, and Mr. Calcraft.

The recent decision of Mr. Justice Chitty in the Alpine case, submitted for consideration as regards its effect on the future practice of the Office.

List of words read.

The Patents Act, 1883, provided that fancy words and words not in common use might be accepted as essential particulars of new trade marks. The words which have been proposed to the Office for registration under this provision may be considered under three heads:—

1st. Geographical names and adjectives.

2nd. Dictionary words applied in some particular and unusual way.

3rd. Invented words.

As regards the first head, the fact to be noticed is that the courts of law have recognised geographical terms as trade marks, that is, they have protected the goodwill of a business which had grown up in association with such trade marks as the geographical words "Turin," and "Liverpool," and "Mexican Balm." In these cases the courts were dealing with existing facts which had, by the efflux of time, created a property in trade marks by a custom previous to the introduction of the Trade Marks Registration System in this country.

These Acts, however, as regards new trade marks, substitute for the growth of custom certain administrative formalities. A trade mark must be registered before any property in it can be claimed; and it would seem to be desirable to apply this new statutory machinery, now substituted for custom, in such a way as to produce the same results which, under the old system, were found useful to commerce. In this light, therefore, there seemed to be good reason for admitting geographical names and adjectives as fancy words in connexion with particular goods, if the particular application of the word could be marked out so as not to lead to confusion and litigation, or to hinder commerce; and it was suggested that the article "the" might be prefixed as indicating that particular use of an ordinary word known to commerce. This, however, the applicant in a recent case refused to do, and Mr. Justice Chitty decided that the word "Alpine" alone might be registered as a new mark for embroidery.

The judgment, however, does not supply any distinct general principle, inasmuch as embroidery and lace work are carried on in the Swiss mountains; and were this case to be applied generally "Highland," which is practically synonymous with Scotch, would be a good mark for fish; "Brazilian" for silver; "Asiatic" for rugs; "Mediterranean" for sea-salt; "Caspian" for oil; "Victoria" for hams and bacon.

On the other hand "Balmoral" is the name of a place and claimed for blacking; "Derwent" the name of a river and claimed for ointment.

"Nubian" for blacking is another instance. One American court has recognised "Dublin" for soap as a fancy word, because the soap was made not in Dublin but in America. On this principle "Newfoundland Port" is claimed by Messrs. Sandaman for port wine, but it is submitted that such a mark is calculated to mislead or create confusion.

In the principal English case, that of "Anatolia" for liquorice, Lord Westbury grounded his decision on the fact that "a particular vendible article had acquired reputation in the market under this stamp." He was dealing with an existing mark, not with the question which the Comptroller has to settle under the Act, as to potential mark.

Directed,—That the time to appeal in the Alpine case having elapsed, that decision must be deemed to preclude the admission of words on the supposition that the prefixing the article "the" makes them fancy words not in common use.

As regards geographical words in future, until some decision on the question has been obtained from the Court of Appeal, such words should not be accepted unless they refer to the exclusive property of the applicants as in the case of the word "Saltaire."

Names of places found in the Postal Guide should not be accepted as fancy words. Georgraphical adjectives like "Metropolitan," "Anglo-Indian," may be accepted when the Comptroller is satisfied that they do not refer to localities producing the particular goods for which the mark is to be used.

Great care should be taken not to accept geographical words as trade marks for the precious metals, inasmuch as such trade marks may be used for purposes of deceit.

Second. As to the second class of applications, those for dictionary words applied in some particular and unusual way, it is submitted (*a*) that words not indicative of articles of commerce may be accepted by themselves as fancy words, as "snow" for flour, "fairy" for lamps, "neptune" for iron, "sunshine" for corsets, "zephyr" for boots, "lightning" for soap. (*b*) Another kind of dictionary word applications are for words which express some idea by contrast with the goods to which they are applied, as "sparkling," which would be descriptive in the wine class or in mineral waters, may, when combined with the word tea in the food class be, it is submitted, a useful mark, as "lock-jaw" for tiles. (*c*) There is yet another division of these English words, which, although common words, and in some general sense descriptive of the goods, are not accurate descriptions, nor words used, or likely to be used, in commerce, in connexion with the particular goods, unless they become known in connexion with a particular maker or vendor, and in these cases it is submitted applicant ought to be required to add the name of the goods. Examples are, the "domestic tea." "Household" or "family" would not have been accepted, as these are terms known in tea trade advertisements. The word "domestic" is not so known. Other examples are "club soda" for soda water, "national sperm" for candles, "the handy button," "the tally-ho cigarette," "the miniature bicycle."

Directed,—This kind of dictionary words must be received with great caution.

Third. A third important class of words claimed as trade marks consist of invented words, "lavaline" for washing preparations, "punchette" for non-alcholic drinks, "metalline" for bricks, "perola" (Portuguese for pearl) for spades and hoes, "oatina" for farinaceous foods, "fibrine" for dog biscuits.

Invented words, however, are not so easy to deal with as they seem, since they are often descriptions of the goods in foreign languages or trifling modifications of existing marks.

Directed,—Invented words may be accepted if care is taken to ascertain that they are not descriptive in foreign languages.

The names of the precious stones in foreign languages should not be accepted as trade marks in the jewellery class. All claims for words in foreign languages should be scrutinised with care.

The representations from the Manchester Chamber of Commerce were further considered, and firstly, in relation to their proposal that the provisions of the Patents Act, 1883, admitting words without devices as trade marks, should not be applied to the Cotton Classes 23 and 24.

The grounds of this proposal are that the marks for cotton goods are principally used in foreign countries where English words and even the characters of the European alphabets are unknown, and that great facilities are given for frauds by the opportunity of registering what appear to be fancy words but often are, or resemble, the names, in Oriental languages, of well known marks. As, for instance, the word "Koko," Japanese for an owl, proposed as a fancy word.

On this recommendation of the chamber the trade is very nearly unanimous.

Directed,—That a list of all pending applications for works which the Comptroller would in ordinary circumstances be willing to proceed with should be sent to the Chamber of Commerce, and that they should be requested to point out their objections with a view of recording the grounds on which the Board of Trade might be justified in directing the Comptroller to refuse registration, until the present state of the law and the custom of the cotton trade had been considered in a court of law.

The correspondence with the Chamber of Commerce was further considered as to their proposal to return to the state of things existing under the old Trade Marks Registration Acts, as referred to in Mr. Steinthal's letter of the 12th May.

The Manchester Chamber of Commerce are not unanimous in their present proposal. The representations now made come from a Committee of the Chamber, not from a general meeting. The history of the matter is briefly this: When the Trade Marks Registration Act was passed in 1875, the Manchester Chamber objected to cotton marks being included on the ground of the expense of registration, and because the marks were used chiefly in foreign countries.

Lord Cairns was unwilling at the start of a new system to exclude from its operation so large an industry as that in cotton piece goods.

The Chamber then proposed to co-operate in registration on certain terms:—

(1.) A committee of experts to receive and examine the marks without fees from the proprietors.

(2.) The registrar to be bound by rule to assent to the decisions of the committee, as to what marks were registrable, and what not registrable.

(3.) Those marks that were registrable not to be advertised in the "Trade Marks Journal" like other trade marks, but specimens to be kept on view at rooms to be taken in Manchester.

(4.) The office in Manchester to be put in care of a gentleman having some experience in the cotton trade.

The Commissioners of Patents accordingly arranged that Mr. Fry should be appointed to assist the committee, and subsequently all applications for registration of cotton marks were sent to him for his report.

The registrar then determined, in London, whether the applications could proceed or not, but being in London, whilst Mr. Fry was in Manchester, he had not the advantage of any special knowledge which Mr. Fry might have on the question, and could only decide each case on exami-

nation in London of the marks referred to in Manchester. There were many complaints of delay and of the decisions made. This was the case as regards the marks declared by the committee fit subjects of registration.

Meanwhile a large number of owners of marks whom the committee of experts had excluded from registration appealed to the courts of law and got orders of court reversing the findings of the committee, both upon particular cases and general principles. The efforts of the registrar to apply these decisions to the pending applications increased the delay.

When the Act of 1883 was under discussion the Chamber of Commerce, complaining in particular of the great delay, proposed that the Manchester office, instead of being an advertisement or search office, should be constituted a registration office, with all the power of the registrar or Comptroller, the business of the Comptroller-General being to record in London the marks dealt with in Manchester.

It was pointed out to the Chamber that leaving the decision on registration to a local officer was not likely to facilitate the reconciliation of trade custom, or supposed trade custom, with the decisions of the courts, and in order ot obviate the delay it was proposed to improve the Manchester office as an advertisement and inquiry office, and to bring Mr. Fry up to London that on the spot he might be able to suggest to the Comptroller any special considerations arising on each application. This proposal the trade accepted on trial for a period of six months.

The new plan was brought into work in March 1884, bad the old and substantial grievance of delay has disappeared.

In the spring of 1885, however, the Committee of the Chamber returned to their scheme of a local registry, and being met with objection to that scheme, Mr. Steinthal now appears to ask for a return to the old state of things, an examination in Manchester by Mr. Fry, and a subsequent examination by the Comptroller in London, conducted on Mr. Fry's notes.

To judge by Mr. Steinthal's letter, the Chamber of Commerce have either forgotten the difficulties they had under the old system or hope by projecting further changes to get nearer their main object, the establishing trade control over the system of registration.

It is to be noted that a portion of the Chamber and a large number of the manufacturers, as distinguished from the merchants, are opposed to the change suggested by the Committee of the Chamber, and it is suggested that in discussing any further changes the Board of Trade should have the proposed changes clearly defined, and a distinct record that those proposals are understood and adopted by the majority of the Chamber.

Directed,—That the original proposal of the Chamber to localise the process of registration in Manchester cannot be complied with, but that the Chamber should be informed that the Board of Trade were willing that Mr. Fry should return to Manchester to make the examination in Manchester as before, instead of in London, provided that the Chamber of Commerce, at a meeting specially summoned for the purpose, should pass a resolution expressing a wish to that effect.

7th July 1885. (Signed) J. L. WHITTLE.

(Ind., H. R. L., Comptroller.)

Chamber of Commerce,

SIR, Manchester, May 13, 1887.

AT the request of the Trade Marks Committee of this Chamber, and with the sanction of the President, I beg to send you herewith in original—which kindly return at your convenience—a Memorial to the Directors of the Manchester Chamber of Commerce stating the opinion of the Memorialists that it would be altogether impracticable that "headings" should be registered as Trade Marks.

Were it not desirable that this Memorial should be before the Committee to-morrow a much larger number of signatures could have been obtained.

I have, &c.

(Signed) J. FOX TURNER,
Secretary.

Edward Roscoe, Esq.,
Secretary,
Board of Trade Committee on Trade Marks and Designs.

TO THE DIRECTORS OF THE MANCHESTER CHAMBER OF COMMERCE.

We, the undersigned Cotton Manufacturers and Agents for the Sale of Cotton Manufactures and Piece Goods, are of opinion that it would be altogether impracticable to register headings as Trade Marks.

Manchester, 12th May 1887.

Greg Bros. and Co.
John Slagg and Co.
Smithson Bros.
Geo. Slater and Co.
Scott Bros.
Crook Bros.
John Mann and Co.
W. V. Windsor.
Swainson, Birley, and Co.
Ashton Bros. and Co.
W. T. Rymer.
Absalom Watkin and Son.
John Haslam and Co. (Limited), J. W. Scott, Director.
Albert Wilson.
Geo. Cheetham and Sons.
Saml. Heginbottom and Sons, p.pro H. B.
John Wood Brown (Limited), p.p. Thos. Wallace, Director.
J. H. Agnew and Bros.
Horsfield and Co. (Limited).
Robert McClure and Sons.
D. Matheson and Co.
P.p. Fielden Bro., Richard H. Ramsbotham.
Geo. C. Weedham.
For Rylands and Sons (Limited), J. Wright, Director.
For Crewdson, Crosses, and Company (Limited), A. Crewdson, Managing Director.
W. D. Coddington and Sons.
Nicholson, Sons, and Co
McKean and Crewdson.
Sheldon Bros.
Standring and Birch.
Sir Elkanah Armitage and Sons (Limited), Jos. J. Armitage.
Geo. Milner and Co.
Robert Gardner and Co.
Sturnock, Sons, and Co.
Wm. Mothersill and Co.
George Spafford and Co.
P.pro Baynes Bros., John S. Dixon.
Bernd. Hyatt and Co.
Hindle and Shaw.

Chamber of Commerce,

DEAR SIR, Manchester, May 28, 1887.

I OMITTED to state that the Board of this Chamber at their meeting on Wednesday last desired me to say that the final paragraph of my note to you of the 13th May, stating that the accompanying "Memorial would have been much more numerously signed" had not its immediate despatch been necessary, must be regarded as the expression of the opinion of the Memorialists themselves.

Yours, &c.,

(Signed) J. FOX TURNER,
Secretary.

Edward Roscoe, Esq.,
Board of Trade.

71, Princess Street,

SIR, Manchester, 8th July 1887.

WE have to enclose a memorial, signed by a number of firms in Manchester, upon the subject of headings. We understand from Robert Hopwood and Sons' manager that he has already been in communication with you upon the subject, and that you will see that the document is forwarded to the proper quarter.

Yours, &c.,

(Signed) SLATER, HEELIS & Co.

Edwd. Roscoe, Esq.,
Board of Trade,
Whitehall.

To the Right Honourable Lord Herschell,
Chairman.

Trade Marks and Designs Committee of Inquiry,
Board of Trade, London.

We, the undersigned merchants, manufacturers, agents, &c., humbly and respectfully submit to the consideration of your Lordship's Committee that distinctive headings on cotton piece goods are of the greatest value as trade marks, and are looked upon in the foreign markets as means for the identification of the manufacturers and the merchants first introducing such headings respectively, and consequently that they indicate standards of quality; we are therefore of opinion that such headings ought to have legislative protection.

We are, &c.,

Novelli and Co., Limited.
Joshua Hoyle and Sons, Limited.
C. Vocotopoulos Sons.
James Wyllie and Co., London.
Williamson Brothers and Co.
Antone Obegi and Co.
Robert Hopwood and Son.
Jacob Anzarut and Co., 21, Chorlton Street, Manchester.
Tasso Brothers and Co., 56, Bloom Street, Manchester.
Arabian Muranian, Bloom Street.
Mesrob, Spartali, and Co., Bloom Street.
Leunda Bros., Bloom Street.
Spyridon, Nianiaras, and Co., 57, Dickinson Street.
A. Chamlati and Co., 4, South Street.
N. Fiani and Co., 4, South Street.
C. y Papayanni and Jeremias, 15, Greenwood Street.
Ritchie and Eason, 6, Marble Street.
A. Xipolitidis and Co., 7, Brazenose Street.
G. Zlatano, 2, Lloyd's House.
G. P. Zolas, 36, Princess Street.
Geo. Lorenzo, 36, Princess Street.
Gumushquerdan Bros., 100, Portland Street.
S. Forzly and Co., 57, Dickinson Street.
N. D. Lappa, 4, South Street.
D. E. Saltaferas and Co., 71, Lloyd's House.
Theodore Sourazoglu and Son, 50, Lloyd's House.
M. Beshiktaslian, 57, Dickinson Street.
Andrew Characopo, 81, Peter Street.
J. C. Saradaki, 8, Sussex Street.
K. A. Michalopulo, 31, Mayer Street.
S. G. Besso and Co., 12, Minshull Street.
G. N. and S. Eliazarian, 40, Blackfriars Street.
P. D. Apostolu, 4, South Parade, Manchester.
Th. Ractivand, 6, Hall Street.
Abbond Sacazan and Co., 3, South Parade.
N. Z. Giotacki, 16, Cumberland Street.
Ppro. David Sassoon and Co.
Edwd. Livingston, Dickinson Street.
Chas. J. Sassoon, Cumberland Street.
S. Bersi and Co., Queen Street.
Otho Hulme,
Jas. Pickford,
James Sidebottom, } Booth Street.
A. Garazi and Co., George Street.
E. A. Bashi and Co., George Street.
A. Sharim and Co., South Street.
Per E. Sharim and Co., A. S., Spring Gardens.
George Sahb and Co., South Parade.
Effraim Nahum, Queen Street.
S. and V. Nahum, Greenwood Street.
A. J. Tabbush, Lloyd's House, Lloyd Street.
Thomas Forshaw, Brazenose Street.
N. Shagouri, Brazenose Street.
Saul Dayan and Co., Dickinson Street.
Thos. Fernley and Sons, York Street, City.
Lee and Elderton, St. James's Street.
R. Scialum and Co., Dickinson Street.
E. S. Cohen and Co., Peter Street.
Bigio Brothers, Queen Street.
A. F. Obegi.
Henry Duck.
B. and A. Levi.
James Stuttard and Sons, Spinners and Manufacturers.
Chas. Wills, Ex-President Bristol Chamber of Commerce.
T. Miniati.
S. and J. Watts and Co.
A. di Botton and Co.
Gamble and Smith.
S. Vivante, Junr.
Thos. Rhodes and Son.
Thos. Rhodes, Limited.
For Langworthy Bros. and Co., Limited, John Blears, Director.

Dear Mr. President, London, January 1, 1887.

My duties here prevent me from being present to-morrow at the Chamber of Commerce on the occasion of the visit of the Right Hon. Lord Stanley, the President of the Board of Trade, I therefore take this opportunity of saying that I concur with the "Trade Marks Committee" in desiring that the "Patents, Designs, and Trade Marks Act, 1883," should be amended so as to give the owners of registered marks equal facilities in opposing the registration of a new mark as those accorded to the applicant for registration; further, it seems to me, that in case of the inadvertent registration of a mark which clearly trenches on the rights of a proprietor of an old mark, it should be neither difficult nor costly to obtain the removal of such new mark from the register.

I also agree with the Trade Marks Committee in thinking that an appeal against the decision of the Comptroller should be heard by the Court of Chancery of the county palatine.

In common with my colleagues on the Board of the Chamber of Commerce, I feel bound to support the owners of old trade marks in the maintenance of their rights, but the Act is not merely intended to prevent fraud; one of its objects is to encourage and reward invention and improvement.

It may sometimes happen that the interests of the old and the new come into conflict, and, therefore, I venture to think, that no person being the owner of an old or a new mark can fairly claim to administer the Act.

The authority deciding whether a mark shall or shall not be registered ought, in my opinion to be absolutely free from the possibility of bias. British industries and commerce are menaced from many quarters, but, perhaps, the most formidable competitor of the future may be the United States of America, where every man is so stimulated to improve the quality and cheapen the first cost of what he produces as to give America a foremost place in skilful appliances.

As one means towards the retention of our position as traders, I think we should remove all hindrances to improvement in quality, and the lessening of cost by making it easy for every man to secure the benefits of his own skill and industry such as patents and registration afford.

I remain, &c.
(Signed) Isaac Hoyle.

Chamber of Commerce, Manchester,
Sir, May 26, 1887.

I have the honour to enclose original letter addressed to the President of this Chamber, by Mr. Isaac Hoyle, M.P., on the subject of headings as trade marks.

I am, &c.
(Signed) J. Fox Turner,
Secretary.

Edward Roscoe, Esq.,
Secretary, Board of Trade,
Committee on Trade Marks.

Dear Mr. President, *May 24, 1887.*

An engagement for this evening prevents me from leaving London until to-morrow, at an hour too late for the monthly meeting of the board of directors.

I see from the notice calling the meeting one item of business is a—

"Memorial to the Chamber about Headings as Trade Marks."

The cost of woven headings on grey goods has grown to such an extent as to be equal in some manufacturing concerns to an income tax of one shilling and four pence in the pound sterling, and more in bad years, that is a grievance too intolerable to be borne without the rights of property in such an outlay. The evil presses more heavily on some branches of the trade than on others, but if the memorialists have suffered it might be useful to take united action by entering into a binding engagement to cease weaving headings into cotton goods. If that could be accomplished I

think the ultimate benefit to merchants and manufacturers would far outweigh all other considerations; if, however, that should be impossible, and if woven headings were found to be indispensable, I venture to hope that we might all agree to seek such an alteration of the law as would bring facts and law into harmony by legal recognition of the function which these expensive additions to the cost of manufacturing perform, always bearing in mind that a woven heading adds nothing to the merit of textile fabrics for clothing purposes; on the contrary, the materials and labour are wasted, all that a heading does, or can do, is to give distinctiveness to an article in its transit from one trader to another. It seems to me that where it serves that purpose it is entitled to the same protection accorded to all other trade marks, but if it fails to do that it serves no purpose worth considering, and should be dispensed with altogether; the latter course, viz., the abolition of headings, I repeat, would in my judgment be preferable if it were practicable.

If the board should decide to present the memorial, may I ask that this letter, or a copy of it, may accompany it as indicating possible solutions of the difficulty.

Believe me, &c.
(Signed) ISAAC HOYLE.

G. F. Gaddum, Esq.,
President of the Manchester
Chamber of Commerce.

The Euston Hotel,
DEAR SIR, May 13, 1887.

ON my return to town I found your packet awaiting me, and now beg to return copy of notes of evidence with one or two remarks or corrections thereon.

I shall be glad if you will, when opportunity offers, state to Lord Herschell's Committee on my behalf that, on consideration, I think it would be better to amend the law by making the penalty 100*l.* on each transaction (or repetition of transactions), whether large or small, rather than fix it at so much per piece, which would always be indefinite.

By transaction, I mean what is generally understood in the trade as an *order* commonly for considerable quantities, and by repetition of transaction, I mean a subsequent and separate infringement of the Act by further illegal use of pattern or patterns referred to. Kindly make this as clear as you can to Lord Herschell and committee, and oblige,

Yours faithfully,
The Secretary, (Signed) F. W. GRAFTON.
Trade Marks and Designs
Inquiry Committee.

P.S.—I return to Manchester to-morrow. If you could favour me with another copy of the notes of evidence addressed to me at 91, Portland Street, I should feel obliged, and if any suggestion of value occurred to my partners, would venture to send the same in course of a few days.

Chamber of Commerce, Manchester,
DEAR SIR, June 10, 1887.

I SHALL be much obliged if, as a member of Lord Herschell's Committee on Trade Marks, you will present the accompanying suggestions of the directors to such committee, at their next sitting.

Yours truly,
(Signed) J. FOX TURNER,
J. F. Hutton, Esq., Secretary.
29, Dale Street.

SUGGESTIONS of the DIRECTORS of the MANCHESTER CHAMBER of COMMERCE in reference to the BOARD OF TRADE INQUIRY into the working of the Trades Marks Act, 1883.

The general dissatisfaction expressed in Manchester with the administration of the Trade Marks Act of 1883 calls for the following amendments of the Act:—

1. That the administrative control over the preliminaries of the Act for all applications in classes 23, 24, and 25, shall be administered in Manchester by a registrar for the cotton classes exclusively, who shall be well acquainted with the usages of the owners of marks in these classes. This Manchester is entitled to ask for on two grounds: (1) that the number of marks used in those classes exceeds that of all the marks used in all the other classes of the Trade Marks Act of 1883; (2) that the usages of the trade in connexion with cotton marks are different from those of all other trades, and require to be supervised by those who understand them, since local usages abroad are constantly altering.

It would be proper to state here that no one man, however skilled he may be in the usages of the cotton marks, will be fully competent to deal with the application of every mark which is put before him. Hence, to strengthen the hands of such an official, and to facilitate the administration of the Act, it will be advisable to take statutory powers for the appointment of a representative body of honorary assessors to pass or reject all marks which have gone through the office before they are exhibited to the public. Such assessors, however, should be excluded from adjudicating upon marks in which either they or their firms are in any way interested..

2. That Manchester should be made in the amended Act the receiving office for all applications to register in Classes 23, 24, and 25, only the final stage of formal registration should take place in the London Trade Marks Office.

3. That in dealing with applications for new marks it should be made statutory: (1.) That when there is an applicant for a mark which appears to clash with any mark already on the register, the Manchester Registrar should be required to serve formal notice upon the new applicant and upon the owner or owners of the mark or marks with which the new mark appears to clash, that registration cannot be proceeded with unless the rights of old owners are satisfied. (2.) That when either the new applicant or the old owner is dissatisfied with any decision of the Manchester Registrar, he shall have the right to re-state his objections before a court of the honorary assessors, whose decision shall be final, save for the appeals to the Board of Trade and to the Law Courts, allowed by the Act.

4. The position of old marks in use prior to 13th August 1875, known as the B. list, is anomalous, and the marks in that list require some kind of consideration in view of the proposed legislation in the Baron De Worms' "Merchan-" dise Marks Law Consolidation and Amendment Bill, " Section 3."

5. In the Amended Trade Marks Act it should be made a duty of the Manchester Registrar to quote refused marks against new applicants, as injury has been done to owners of refused marks through the office ignoring them and granting registration to late applicants of very similar marks. The Board of Trade has agreed to this (*see* pp. 60 and 65, Manchester Chamber of Commerce Report, 1886).

6. Whenever the owners of old marks grant assents to the registration of new marks, all representations of the latter deposited with the Trade Marks Office should contain on the face of the representation a notification of the fact that assent has been obtained from the owner of the old mark, and if the old owner further requires the new applicant to confine the use of the new mark to goods used in, or exported to, certain specified markets or countries, such limitation of user shall be endorsed on the representations of the new mark.

7. As stated in Mr. H. G. Calcraft's communication to the Manchester Chamber of Commerce, 21st July 1886 (as printed, pp. 60–61 of 1886 Report,) it will be necessary (1) to make provision for the Court of Chancery of the County Palatine to be "The Court" to which appeal lies under section 90; and (2) to enact that an appeal against a decision of the Comptroller to register a new mark should lie in the first instance to the Board of Trade, in the same way as an appeal against a decision not to register.

8. It should be enacted that all words, whether English or foreign (except the names of firms registering), cautions, line headings, borders, mottoes, monograms, letters, figures, names, and personages, should be required to be disclaimed by the applicant.

9. The sub-division of Class 24 was not allowed in the Act of 1883, and should not be sanctioned in the proposed amendment of the Act of 1883.

Manchester, 7th June 1887.

TRADE MARK PROTECTION SOCIETY.
(Established 1871. King Street, Cheapside.)

1, Castle Street, Holborn, London,
SIR, January 7, 1888.

As requested by Lord Herschell (questions 1033 to 1040) when giving evidence before the committee, I have been in communication with the advocates and other agents representing the Trade Mark Protection Society abroad, and now have the honour to transmit copies of the replies received to the inquiries made by me. Such replies,

I may observe, evidence throughout that there have not been any changes in what has been known here for some years past to be the practice abroad.

I also transmit herewith a copy of the label (a well-known one—John Oakey and Son's Wellington Knife Polish) which accompanied the inquiries, the following being the terms in which the questions were put:—

(1.) Whether, if copies of the label in the colours as shown were filed with the application papers for its registration, the label would be equally protected were the colours in use varied, say, for instance, if what now printed in green were to be changed to red, and what printed in red changed to green, or even if varied into totally different colours than those employed in the label as shown?

(2.) Could infringements, in whatever colour or colours printed, always be restrained under the registration in any one particular colour or any combination of colours?

(3.) Whether the authorities would register the mark in the colours shown when the English certificate supplied for the purpose of enabling registration to be effected, shows the mark printed in black on a white ground only; or, in other words, do the authorities insist that the foreign mark as tendered for registration should agree exactly, including colour or colours employed, with that shown on the British certificate?

I should add, that particulars of any decisions upon the subject included in the questions as above by the courts in each country were requested in the letter which accompanied the questions, although, I regret, it is only to a very limited extent that information under this head has been elicited.

I have, &c.
(Signed) EDMUND JOHNSON.

Edward Roscoe, Esq.,
Secretary to the Trade Marks
and Designs Enquiry Committee.

UNITED STATES CIRCUIT COURT, FOR THE DISTRICT OF MARYLAND.

Anheuser-Busch Brewing Association
against
James B. Clarke.
} In equity.

On motion for preliminary injunction.
Mr. Rowland Cox for the motion.
Hon. Wm. Pinkney Whyte for the defendant.

MORRIS, J.:

The general rule of law applicable to this case is, that if a manufacturer has applied a peculiar and distinctive label to designate his goods, and has so used it that his goods are identified by it, a court of equity will restrain another party from adopting and using one so similar that its use is likely to lead to confusion by purchasers exercising the ordinary degree of caution which purchasers are in the habit of exercising with respect to such goods.

McLean *vs.* Fleming, 96, United States, 245.

The complainant's affidavits go to show that the complainant was the first to use for beer a label with a diagonal red band with the name of the kind of beer appearing in white letters on the red band, and that he has been habitually using this label for two years.

The label is a very noticeable and distinctive one, by reason of the diagonal red band.

The result of the effect upon the eye from seeing a number of bottles is that it is a beer labeled with a diagonal red band, and the more frequently one sees it the more this one effect is deepened.

It does appear altogether probable that a consumer who had been used to getting bottles labeled with complainant's label would more and more rely on the diagonal red band as its distinctive mark, and would be likely to accept the respondent's beer with his diagonal red label on it as supplying what he was in the habit of getting.

There is nothing in the differences in the labels calculated to counteract this, and I think it is a strong case of a similarity likely to deceive.

The respondent's statements and explanations of how he came to hit upon this label for his own use are not satisfactory.

It appears that it was suggested to him by a bottler in Washington, named Christian Abner, who was a rival of a bottler of complainant's beer and using complainant's label in that same city, named Edward Abner. Nothing is shown by the affidavits to repel the suspicion which naturally arises that the subsequent adoption of such a very similar label by one of the two rivals in the same city could not be accidental, but must have been for the purpose of confusion.

On the case as shown by the affidavits I think the complainant is entitled to the injunction as prayed.

AMERICA (UNITED STATES OF).

The registration under our statutes of a particular colour would not prevent the application of the same design in other and different colours. My opinion is that if the colour were described as of the essence of the trade mark, the use of another and different colour would not be held to be an infringement. To illustrate my meaning I beg to hand you herewith a label showing a trade mark which has been registered and in which the colour was made an essential element of the mark, that is to say, the specification recited that the trade mark consisted of a diagonal red band (I enclose a copy of an opinion in which the colour of the band is referred to as constituting its most important characteristic). I have given a number of opinions in which I have expressed the view that the application of a similar band in blue was not an infringement. To summarise, I think that the terms of the registration are a controlling consideration. *In the absence of words limiting the mark to a particular colour it would cover and include all colours*, but I think that it is difficult to lay down a rule that will cover all cases. It seems to me each case must stand on its own merits.

AUSTRIA.

I cannot give you a positive answer to the questions put to me as our legislation does not contain special provisions relating to the cases which you mention.

According to my appreciation the difference of the colour of the paper on which a mark has been printed is of no influence.

If the registered mark appears on a white paper it will of course also protect the marks printed on a yellow or on a blue paper. If, however, the essential parts of the registered mark appear in a certain colour, let us say in red or in green, then these colours must equally be found in every protected mark.

I must at the same time observe that forgers are accustomed to imitate conscientiously the colours, knowing that they strike the eyes better than any other part of the mark and that they induce the customer to take a mark for a genuine one if its colour corresponds with the original.

Should the legitimate owner of a mark be desirous to make use of different colours, he can without any risk attain his object by making in his application a special proviso to the effect that the mark may also be used in different colours, which proviso then appears in the certificate.

Our authorities would not register an English mark if it does not exactly agree with the mark shown in the British certificate.

I am unable to refer you to judgments which have been passed by our tribunals in similar cases. According to our law the decision of the question whether a forged mark could easily be confounded with a genuine mark is left to the finding of experts, whose decisions are not made public and are not collected.

BELGIUM.

The practice in this country follows that of France, inasmuch as Art. 8 of the Belgium law of April 1st, 1879, is a substantial reproduction of the French law of June 23rd, 1857, Art. 8.

(*See* France, *infra.*)

BRAZIL.

1. A label in colours, such as that enclosed by you, can be registered in Brazil.

The label would be equally protected if the colours were varied in use, for instance, if the green part of the label were changed to red, or *vice versâ*, or if the arrangement of the colours were diversified. On this point I may add that I have always, whenever registering a label, claimed that the colours of same shall be open to variation in any colours.

2. In my opinion alteration of colour or combination of colours would be considered as an infringement, and be subject to restraint under the registration in any colour or combination of colours.

My reply on this second point is based solely upon the logic of the first point, but the tribunals have never yet dealt with such a case. The only infractions prosecuted

up to the present have turned upon pure and simple imitations of registered labels (for example, in *re* "Ihlers and Bell") or close imitations of the design and characteristics, giving to the whole a near resemblance to the registered label, and so leading the buyer into error when not able to confront the genuine with the false libel.

The question of colours has not yet been raised, but I believe that in the case of actions on this ground the courts would decide as stated above; seeing the many sentences passed by the French courts with that interpretation, and the Brazilian law being more or less a reproduction of the French law.

Canada.

The courts have always sustained trade marks and labels on precisely the same principles, and that the colours may or may not be an integral part of a trade mark; in this case (of a conspicuous label) the colours seem to be a part of the instrument destined to acquaint the public with the manufacturer, and to distinguish him from others.

The effect of the deviations from the use of the identical object registered is a matter of judicial appreciation in each case of dispute. The wiser course for the proprietor if he wants to alter his label in colours, or otherwise, is to register each different label.

Cape.

As to your first query, we are of opinion that the label sent us would be equally protected notwithstanding the variations in the colours, and that anyone using a mark similar to the one under consideration, but in different colours, would certainly be liable for infringement under our Act of Parliament. The Registrar of Trade Marks here concurs with us in the view we take of the matter.

Your second query is answered by what is above stated. We may add, however, that proprietors of marks may be easily and fully protected as regards the variation of colours by applying to be registered in any colour. Of course when colour is the essence of a mark, due protection will always be ensured by virtue of the specification lodged with the application.

We may state generally that, in deciding questions of infringements of trade marks, the Supreme Court here follows the decisions of the English courts in such matters.

Chili.

Our trade mark law says that to register a mark, a facsimile of it must be deposited in the National Agricultural Society, and mentions nothing about colours or size; therefore, in this society, they are strict in not registering marks under other conditions. According to this the questions referred to in your inquiry cannot occur, that is to say, the label printed in green cannot be changed into any other colour; and in conclusion, marks can only be registered exactly corresponding with the fac "simile," and of course the colour, size, and everything else cannot be changed. In your case of "A and B," as I told you before, the mark is registered just as it appears in the certificate, that is to say, a white label with a black cock in the centre. You have nothing to fear in regard to infringements in this case, because if any one wanted to have registered a mark in any other colour, and with the letters "A and B," that person would be liable under our law, and would be punished.

Denmark.

1. Our Act regards colours as indifferent.
2. Infringement in whatever colour could always be restrained, at all events when the colour is not especially inserted in the description.
3. Our authorities insist in general upon identity between the foreign certificate and the mark tendered. But as colours are indifferent the Registrar does not care what colours are shown on the mark tendered.

Dutch East Indies.

Decree of April 6th, 1885. This law contains an Article 10, couched in terms similar to those of the Dutch law. (*See* Holland, *infra.*)

France.

Replying to your questions, I beg to inform you that a trade mark is entirely protected by the fact of the design, lines, words, and disposition as shown by the original label annexed to the application for registration. The size and colours may vary.

What cannot vary is the shape, form, line, and design of the label.

Consequently there would be infringement in the mere copy of the label whatever the colours or combination of colours employed for said copy.

Another Advocate's Reply.

The registration of a mark fully protects its design, shape, and colour, although in respect to colour it is advisable to state in the description accompanying the application that the right of altering, combining, or interchanging the colours in any manner whatsoever is reserved. In order to place the matter as clearly and unmistakeably as possible before you let us take an imaginary case in point in which considerable changes of colour have been made, but in which the design has been preserved. There can be no doubt that such proceeding would be held to be counterfeiting the mark, and the offender condemned. Many judgments bearing upon the question have already been delivered, and it is moreover clearly enough set forth in Art. 8 of the law of June 23rd, 1857, which runs thus:—"A fine of not less than 50 francs, and not "exceeding 2,000 francs, with an imprisonment of from "one month to one year, or one of these penalties only, "shall be imposed; 1stly, upon any person counterfeiting "a mark or making such a fraudulent imitation as to "deceive a purchaser, or using any such mark; 2ndly, "any person making use of a mark bearing indications "likely to deceive the purchaser as to the value of the "article; 3rdly, any person knowingly selling or exposing "for sale any goods bearing fraudulent imitations of a "mark or indications likely to deceive the purchaser as "regards the value of the article."

On the whole it is advisable, on registration of a mark, to state clearly what changes are intended to be made in the colouring, in order that, should proceedings be taken, all rights reserved may be brought forward. A slight change in the shade of any mark could never enable a counterfeiter to continue with impunity.

Germany.

1. If copies of the labels in colours, as mentioned in your inquiry, were filed with the application papers for registration in Germany, the label would be equally protected if the colours in use were totally different.
2. Infringements in whatever colour or colours different from the label filed with the application or registered would always be restrained.
3. Colour is, conformably to German law, indifferent in trade marks. If the British certificates show the mark in black on white ground only, and even if the label presented for registration does not show the colours of the original mark, registration will nevertheless take place, and the mark be protected against imitation, in whatever colour it may be. I should add that of course it is always preferable to file with the application some label showing the original colours, for as infringers always, or mostly, imitate the mark as used by the owner, the courts will be more disposed to condemn such infringement if not only the the drawing but also the original colours are imitated. So did the late Supreme Commercial Court in your case of Ainsworth, and so has since been decided in several cases.

Holland.

Law of May 25th, 1880. Art. 10 of this law also applies in such cases as you foresee. It runs thus: "Persons "liable to imprisonment of one week to three months, or "to a fine of 25 florins to 600 florins; any person know-"ingly selling, exposing for sale, delivering, distributing, "or holding a stock with a view to selling or distributing "any article bearing upon it or its wrapper a mark be-"longing to another trader, or a *slightly altered imitation* "of any such mark."

It is therefore self-evident that under this law a mark in colours, of which alteration and interchangeableness of whatever kind have been duly claimed, cannot be imitated without rendering counterfeiters liable to the penalties stated.

In answer to question No. 1—

All marks may be used in the colours in which they are registered, and also in any other colour or colours or combination of colours.

In answer to question No. 2—

Of course you can oppose the registration of the same mark in other colours applied for by anybody else as the owner or owners.

HUNGARY.

1. The label would be equally protected (in Hungary) when the colours in use vary, but it is well when applying for registration to point out that the right to use in all colours is claimed, and to ask to have it so stated in the certificate.

2. Infringements in whatever colours printed would always be restrained under the registration in any one colour.

(The essential with us is the *ensemble of* the *design*.)

3. The Hungarian authorities will register the mark in the colour shown, or whatever colour (as the colour is no essential part of the mark with us) the English certificate would bear, say, black, green (any colour).

I have examined the indexes in the archives, but found no case in which the colour played a part; but, for instance, the names used on the labels play a great part with us; for instance, there are the Buda Pesth bitter waters. Now the owner of the "Hunyady Janos" (John) bitter water source carries on a suit against a pretender who uses on his labels the words "Hunyady Arpad." We lawyers await with great curiosity the decision of the courts, as of course it will be appealed—up to the Lord Chief Justice of Hungary.

Our Government is also going to appoint a commission of inquiry, as it is intended to reform the statutes on the subject of trade marks, which are very far from being perfect, and it is only owing to the wisdom of the courts that perfect anarchy in the matter has hitherto been prevented.

I shall take part in the inquiry, as Government has asked me to do so, but, like most Government inquiries, this also will take probably two or three years before coming to final decisions.

NORWAY.

In reply to your inquiries, we beg to draw your attention to the paragraph (315) of our law about protection of trade marks regarding marks belonging to foreign subjects, which runs as follows: "The trade mark is not protected to a further extent than in the foreign country"; consequently the extent of the protection in this country of English marks as to the colour of the same depends upon the rules in England.

Our law itself does not attach any importance to the colours; the design is the essential particular. When a mark is registered protection is given to it, whether it appears in common print or in different colours.

PORTUGAL.

After consulting the proper officers here, in addition to our own opinion and experience, we can say as follows:—

There is nothing explicitly treated of in the Portuguese legislation upon trade marks and their registration with regard to variations in the colouring of the design or in the colour of the paper upon which it is printed; but the law is very emphatic in requiring that a mark presented for registration shall not be so similar to another already registered as to be easily confounded therewith. When the present law came into operation (so the officials inform us) the question was raised as to whether a change of colour or colours was to be considered a sufficient distinction to allow of a separate registration, or was to be considered a prohibitive "similarity." It was then settled that the trade mark consisted in the particular *design*, irrespective of colours, and that simple variations of colours could not entitle the producer of such variation to register as his a mark which in other colours belonged to someone else.

We always register when so ordered to cover all colours both in paper and design, and the office accepts the application in this form. We are not aware that the point has arisen in the law courts here, probably because it is considered to be unassailable.

ROUMANIA.

To question No. 1, Yes. But it is always well to do as I have been in the habit of doing, *i.e.*, on registering (and under the head of observations) to claim the right to thus alter the colours, or vary or combine them in any possible way, provided that the same mark be retained on the label as well as any printed matter the name, motto, &c.

To question No. 2, Yes.

RUSSIA.

In our trade mark law nothing whatever is said about colours, so that we cannot positively say anything as to whether, if copies of the label in the colours as received were filed with the application papers for its registration in Russia, the label would be equally protected were the colours in use varied into different colours from those employed in the label as shown.

2. Neither can we say whether infringements in whatever colour or colours printed could always be restrained under the registration in any one particular colour or any combination of colours. The fact of the matter is that we never had such a case before the law courts here.

3. When the English certificate supplied for the purpose of enabling registration to be effected shows the mark printed in black on a white ground only the authorities here would insist upon the trade mark as tendered for registration agreeing exactly, including colour employed with that shown on the British certificate. We have had occasion for you, we think, and for other clients to ask the authorities in our petition when filing the application papers to protect the labels filed, even if varied into totally different colours than employed in the labels as shown. The Ministry accepted from us the petition with this clause without raising any objection, but we cannot say if it ever came to a law suit whether this clause in our petition would be operative, that is to say, whether the law court would consider a label printed, for instance, in white on a black ground protected when the label was originally registered printed in *black* on a *white* ground.

SPAIN.

So long as the essential part of the mark is not altered the label can be registered and equally protected whether printed in *one* or *more* colours different to the one registered.

Any infringement in whatever colour or colours would be restrained under the registration.

The colour shown on the English certificate would not affect the registration so long as the mark is not different.

SPANISH COLONIES.

Same as Spain.

SWEDEN.

As applications for registration of trade marks in Sweden must always be accompanied by electros (printing blocks) it is the custom here to print the copies by means of the electros. The copies, therefore, in most instances are printed in black on white paper. Also it is our practice in the specification of the mark to mention only the form, not the colours, except when mentioning the colours is especially asked for by our clients. The mark will, when registered in that way, be protected for all colours whatever. If we should try to annex coloured copies by the deposing of the petition, we think the same should be accepted and the protection equally good as before said, provided that no special colours are claimed in the specification. But, as before said, electros must always accompany. It is easy to print copies from the electros, and the best way is, therefore, to do so.

2. We do not quite understand this question. We think you mean that if a mark is registered as printed in a determined colour or a combination of colours infringements printed in other colour or colours can then be restrained. If this is your meaning the answer cannot be made with surety; the only thing we can say is, that it will depend on the circumstances. If the infringing mark, however, in spite of the altered colours will be to such a degree like the registered as to be confounded with the same, it ought to be restrained. This is, however, a question to be answered in each separate case by the court of justice.

3. Our authorities are very liberal, and do not insist upon that the mark shall agree absolutely with the English certificate, and especially we think they will not hold strong upon the colours.

SWITZERLAND.

1. The question has never been decided by any Swiss court, and I can give you, therefore, my opinion only. All the marks are published and registered in black without colours, and are therefore protected regardless of colours. This is also the case where the trade mark tendered for registration is coloured; the trade mark is printed in black, and provided the exterior of it is not changed the colours may vary at the owner's pleasure and remain equally protected. The colours are of importance in the case of imitation, the colour or combination of colours may clearly show the intention of the imitator to deceive customers.

2. This question, too, is one of law which has never yet come under the consideration of any court, but it is my opinion that infringements in whatever colour or colours printed could always be restrained under the registration in any one particular colour or any combination of colours. The registration office is of the same opinion.

3. Foreign trade marks are registered if the reprint made with the block corresponds with the English certificate without regard to colours. I have registered many foreign coloured trade marks and many coloured Swiss trade marks are registered. The mark can, therefore, be registered in the colour shown when the English certificate supplied for the purpose of enabling registration to be effected shows the mark printed in black on a white ground only.

Turkey.

The Turkish law on trade marks does not mention colours as one of the characteristics of protected marks. It only speaks of "names, brands, signs, letters, numbers, envelopes, and other printed or stamped matter (Art. 1). I therefore take it that whatever may be the colour of the paper or other matter on which the "mark" would be impressed, if the mark were imitated or misapplied, that would constitute a forgery, notwithstanding the difference in the colours. From this I conclude it is the mark itself and not the colour of the mark that any Turkish court before which a case of infringement would be brought would regard.

My opinion is supported by a decision in the case of Messrs. Brook's well-known cotton mark, where the infringer had adopted their goat's head, but with a bell round the neck. This might have been considered as a material difference. The Turkish court, however, held that any alteration calculated to mislead the public must be regarded as a forgery, and gave its decision in favour of Messrs. Brook.

A.

PRECIS OF EVIDENCE.

Saturday, 12th March 1887.

MR. COURTENAY BOYLE, C.B., Assistant Secretary, Board of Trade, examined.

Has conferred with the Trade Marks Committee of the Manchester Chamber of Commerce, and reported to Board of Trade, 2. Principal point. Board of Trade take a different view from the Chamber as to what is *similarity* calculated to deceive (in relation to the cotton classes). The Chamber say there is such similarity between the two marks (handed in) that one should not be registered without consent of owner of the other; that consumers are not capable of testing differences not very distinct, and would not have the two marks before them for comparison, 3. Instances in which applicants have withdrawn marks proffered by them when made aware of prior registered marks conflicting with them, 6–9. Opinion of Manchester Chamber on the point of what constitutes resemblance in marks. Case of Japanese football players, whether having registered a mark representing a duel, one representing a melée should be refused, 10. Chamber say Act of 1883 is no protection to them at all, 12. Instructions of the Board of Trade, 14. Further complaint of Chamber that negotiations preliminary to registration are conducted more in London and less in Manchester than they should be. Suggestions to meet this complaint, 16–17. Great majority of applications in cotton classes come through Manchester. Question of central control, 20. Views of Glasgow Chamber as to preliminaries of registration being conducted at Manchester, 22. Number of applications from Manchester, 24. Wider discretion of Comptroller by alteration of Act, 25. That Comptroller should register as in patents, without going into question of similarity, 26. Committee of Experts to arbitrate suggested by Manchester, to arbitrate on points, 28. Appeal to Court under s. 90. That in cases from Manchester appeal should be to the County Palatine Court instead of coming to London, 30. That the Comptroller, it is urged by Manchester, should be a man practically acquainted with the trade. Mr. Fry's duties, 37, 38. Limitations on consent of user; that they should be endorsed on mark, 39; and be a part of registration, 44. But question of altering law, 51. Legal difficulties that may arise, and present practice concerning, 64–77. That there is no appeal to Board of Trade where the Comptroller decides to register a trade mark for any person objecting to such registration. Action of Board of Trade under their powers touching appeals and wish of Manchester Chamber in matter, 78. Word marks, objections of Manchester Chamber to their registration, 82. Fancy words, difficulty in defining, legal decisions on, 84. Chamber desire there should be no registration of word marks in the cotton classes, 85. Reasons for objecting. Comptroller has many cases to determine, 88.

Saturday, 19th March 1887.

Mr. HENRY READER LACK (The Comptroller) examined.

That the chief difficulty in regard to meeting dissatisfaction entertained at Manchester to the working of the Act is that the courts do not hold the same view as the cotton trade, 95. Their view of what conflicts, 96. Comptroller is not entitled to refuse registration except when there is a near resemblance (s. 72, Act 1883) calculated to deceive, 97. The cotton trade did not wish to come under the Act 1883, 99. Representations of Manchester Chamber of Commerce. Trade marks suggested by previously registered ones, 102. Motives of applicants; those wishing to get a good distinctive mark, those wishing to get as near as possible to some reputed mark. A good many of the latter class. Orders are sent to ship goods of an inferior description with a mark as nearly resembling as can be ventured, 103. Mark comes to be recognised by a verbal description of it, 105. Special legislation for cotton trade; whether possible, 106. Manchester objection to word marks that they have been so generally used in the trade that no word can be said to be fanciful or descriptive in their trade, 110. Difficulty of dealing with word marks at Registry Office, 113. Oppositions in Manchester cases being tried by the Palatine Court; opinion on, 115. Protection to trade marks before passing of Act 1875. Duties imposed on Comptroller by that Act and the Act of 1883, 117. Opinion as to distinctive marks, 119. Difficulty in determining what is a fancy word, 122. Complaint that he does not refuse a larger proportion of marks, 123. Resemblances accidental in some cases. Small shopkeepers registering good marks to the exclusion of the large merchant. Question of registering for different markets, 126. Suggestion for meeting difficulty, 134. Question as to Colonial registration laws and their requirements, and India, 140. Poverty of inventors of trade marks; limitation of natural objects, 143. Agreements as to user of marks not registered, 145. Provisions of s. 64, Act 1883, too restrictive for trade purposes. Applicants desire to register names, now only registered where meaningless or not descriptive, 150. Names printed or impressed or woven in some particular and distinctive manner, 155. Proposal of Merchandise Marks Bill to restrict prosecution to registered marks, 156. Number of refusals consequent on recent decisions of the Court, 158. Whether applicants should be allowed to put in applications, and oppositions be entered, 159. Opinion as to what is a legitimate fancy word, 161. Board of Trade instructions and terms of Act, 163. Old marks, C 79, W or M, their value. Not registered now, 168. Procedure on applications and hearings as contrasted with patents' procedure, 170. Dissatisfaction in Manchester prior to Act, 1883, 172. Action of Manchester after passing Act, 1875. Work of Committee of Experts, and whether satisfactory, 172. There has been a Board of Trade staff in Manchester office since 1876, though Mr. Fry was brought up to London office for a time after 1883, 175. Procedure on Manchester applications prior to 1883, 179. Number of marks dealt with by Committee of Experts, 188. All the formalities of application gone through in Manchester what is really desired by the cotton trade, 190. Difficulty of dealing entirely with matter in Manchester, 193. Qualifications of Mr. Fry, 196. Are no instructions of Board of Trade; has to follow decisions as far as he can of the Court, 199. What guides his decision; is bound to register unless there is a near resemblance, 205. Case of a mark of two men in a tree as conflicting with mark of one man in a tree, 206. Contention of the Manchester marks of soldiers on horseback, 210. Slightly varying bicycle marks, 220. How far natives in India and elsewhere may be deceived by marks in which, for instance, the bicycle is a predominant feature, 221. Different foreign animals, their resemblance as drawn, 223. Procedure of the Manchester office on applications for trade marks. Customs of trade and mode in which goods are ordered, 235. Views of the Chamber of Commerce, and opposite views, 241. Extent to which the former go, 244. Cotton trade absorbs over 50 per cent. of the whole marks of the country, taking into account the marks which are common property, 250. A Manchester mercantile house has hundreds of trade marks, 251. How the Manchester office could be worked, 255. Question of special legislation for marks in the cotton trade, 259. Suggests that he should register anything in the first instance, subject to opposition, and provision that no property can be acquired by registration which are descriptive or of common use, &c., 263. Publication of marks in Manchester at present, 265. Refused marks and their position, 273. One of the grievances of Manchester that in case of objection to a new mark they have to come to London to state it, 276.

Wednesday, 15th June 1887.

THE COMPTROLLER.

Several points with regard to Class 24 (cottons). Admits there have been variations in the practice of the office at different times. Have not accepted words, as a rule, since the commencement. One "heading" by mistake put on the register, 2903. Opinion as to the practicability of registering "headings,' 2912. Does not think any notice ought to be taken of using "cautions" in connexion with marks. Does not see any objection to registering "consents" if Act be so amended, 2917. Rather exaggerated statement of Mr. Bailey's that the office took thousands of common marks. As to the reasons for not advertising cotton marks, 2919. As to the subdivision of classes, 2924. No objection to applicants being required to give addresses for service in the United Kingdom. No objection to persons trading as firms being accepted under the firm name, 2930. Various grounds on which a mark may be refused registration. Reference to suggestion that anyone should be allowed to register what he pleases, taking his chance of it being good or bad, 2934. A great feeling in favour of an extension of the existing definition of a mark. Difficulty about the word "distinctive." Marks have to be rejected which are quite good enough for trade purposes. Instances of labels distinct from anything hitherto registered, but still not distinctive. Proposed amended Merchandise marks law as leaving such marks without protection. Infringements of Messrs. Curtis and Harvey's marks, 2942. Could not under the existing law refuse to register a mark merely on the ground of combined similarity; illustrated by a case submitted to the Committee on the Merchandise Marks Bill. Opinion as to dealing with such cases under an amended criminal law, 2946. Does not favour the suggestion that applicants should give a description of claim, of no practical use when you have a complicated mark. That there is a general expression of opinion in the evidence that it would be better to remove the appeal to the Board of Trade. Suggestion to govern practice of Board already before Committee would meet a great many of the objections. No doubt it would be a great convenience to the office if it had nothing to do but to register as in the old designs, 2949. Very desirable that any appeal should be made to the Palatine Court. Manchester views on the question of hearing of appeals from decision of Comptroller to Board of Trade, should be an appeal from the registration as well as from refusal to register, 2957. As to serving notice on owner of a registered mark when applicant brings in a mark which appears to clash with the one registered; question if Board could make a rule for Comptroller to hear both parties, 2959. Suggested amendment in section 63 of the word "may" for "shall." Adding name of an individual or firm in the possessive case (section 64). Case and opinion of the law officer on the point. Discussion of the question whether it is desirable such marks should be protected. Case of a rival to a firm in Sheffield, a man having the same name. Abroad names are given on purpose to children, *e.g.*, "Jean Marie Farina." Suggested amended definitions for clause 64. If there are certain marks in the market they will circulate whether registered or not, 2985. Difficulty to interpret when distinctiveness begins, where is the border line. Courts have not been able to agree as to what is a "fancy" word. Purely descriptive words cannot be protected if registered. Thinks as regards the registration of phrases that it is difficult to say where you are to end. Would not at present be allowed as "fancy" words, 2992. Brands, those on cigar boxes, it was held by late Master of the Rolls, could not be registered under the Act of 1875, therefore the word "brand" was put in the Act of 1883. English cigar makers in London as registering brands, 2998.

Saturday, 18th June 1887.

THE COMPTROLLER.

Agrees that certain people want to use invented words with some relation to the subject-matter dealt with in the trade, 3005. Words near to, similar, or almost identical words, in the dictionary, considers the majority of such marks very weak. Use "Ozo" for "Ozone." The word "Ozostime" as a fancy word. Ought not to go into the derivation too much, as public do not know all languages. Present practice of the office in requiring a translation when word is not known, 3017. Geographical words as affecting the tin plate and the whiskey trades. Thinks it would be safer to have no geographical names at all as marks; must exclude the use of any such word which appears intended to describe the place of origin. Example of a deceptive word "Oil-less carbonate" when it is not so. "Anglo-Portugo" oysters. A few marks for coal, 3037. Short phrases, "Three Castles" for tobacco, "Old Judge," "The Hard Seam." Does not think the use of a mark should be followed. Would be a great deal to give a man the word "Navy" for rum or tobacco, and create a misapprehension. The term "India Pale Ale," common property. Provisions of the new Merchandise Marks Bill as affecting marks not registered, 3049. What may be added to essential particulars; at present anything may be added; no necessity to disclaim if what is added is common property. Agrees that it might be better to provide that the addition of any letters, words, or figures, should in no way affect the validity of the trade mark registered. Mr. Johnson suggests that the exact status of added matter should be defined; it is ordinary letterpress to accompany essential particulars. Opinion as to the difficulty of reading section 74 of Act, 1883, with section 64, should be an amendment of the former section, 3064. Does not think disclaimers are at all desirable; leads to complication; has always refused, under directions of the Commissioners of Patents, to take distinctive parts of common property unless worked up into a new device, 3067. Thinks it might be desirable to re-register in an amended classification at the end of 14 years rather than to touch the classification at the present time. Reasons why he could not divide the classes for the future. Could without difficulty divide classes into A, B, and C for the future. The words of the Act say you must register for particular goods or classes of goods. The classification framed in 1875 was obliged to be drawn up in haste. International classification; difficulties in the way. Registration of a series of labels under section 66. Intention of the provision. Difficulty might be met by allowing at any time deposit at the office of the mark, with a statement of any fresh goods with which it is proposed to be used, on a small fee, 3085. Intention of section 67 as to colour being excluded from registration. Question of the necessity of the criminal law dealing with infringement by imitation of colour. As to giving certificates on production of a label where the owner could not get exactly the same colour, 3092. Advertisements of applications should take place within a short space of time. Size of representations of marks; charge might be something more when they go across the page of the Journal, 3097. Thinks two months too long for sending in counter statements, and as to time for giving notice to the public. Sees no reason why the bonds should be required in cases of oppositions. Thinks it would be reasonable that a successful opponent should get his costs, 3102. As to the Comptroller hearing in the first instance, as in patent cases. Questions whether there should be an appeal to the court, or the law officer, or the Board of Trade. Suggests that in section 70, line 3, the word "classes" should read "description." Amendment of section 71, whether it would answer, where two or three persons are applying at the same time for the same mark, for the Comptroller to hear them, with an appeal to the court, and in regard to section 72, whether in determining resemblance the Comptroller shall hear both sides and determine subject to an appeal. Sub-section 2: decision as to resemblance one of the most troublesome parts of the Act, many points he would not know unless hearing both; cannot be supposed to know everything that is going on in the whole trade of the country, 3106. Difficult to know when to give notice of marks clashing. Certain trades publish a list of marks applied for, and so are enabled to watch for new marks; those in the mineral water trade, "Fizzine," "Pop," "Salutaris." Where registered owners cannot be found the Comptroller might, after advertisement, proceed with marks merely conflicting in a minor degree, but this would conflict with sub-section 5 of section 79. Addresses for service on foreigners useful. Asking for objections from registered owners, when it is thought that the mark would do him injury, but such inquiry should only be where it is determined there can be no registration without consent, 3121. Want of clearness in section 73. Amendment of section 75 to put the words "application for" before "registration," 3125. No objection to Mr. Cutler's suggestion, in respect to section 76, to place trade marks on the same footing as patents under section 31. That section 77, certificates of refusal, is dealt with by the Merchandise marks legislation. Disclaimers: no objection to put on the register an undertaking not to use a mark except in certain markets. Shifting of dormant marks into one class. Fees: a heavier initial fee. Sheffield fees. History of the legislation. Position of the Cutlers' Company; agrees in the suggestion put forward on the part of the Company about old owners being made to apply for registration, 3147. Does not think it is desirable that certificates should be issued by

the Sheffield office. Suggestion of Mr. Hughes for the appointment of a hearing officer. Putting the word Sheffield on goods; difficulty arising from the practice of the trade; what may possibly be the effect of worrying traders too much in times of low profits. "Low Moor iron" meant as an indication of a certain quality of iron. As to the word "in his opinion" being omitted in section 86; meaning of section 90. Sees no objection to Mr. Johnson's suggestion that a person should, under section 91, be allowed to disclaim, where he has claimed more goods than he wanted without going to the court. General certificate under section 96. Desirability of some amendment of section 103 (international arrangements). Johnson's suggestion as to appointing trade committees to advise office, 3163. As to principle for dealing with conflicting marks when "like sounding," reasons why not practicable. Against Board of Trade publishing directions affecting the public. That the "three" rule in regard to old marks should be reinstated without going to the court; a point requiring legislation. One mark, say a monkey (it may be of a small trader) blocking all others in the same trade; suggested remedy, 3169. As to statement of length of user in registering a mark as preventing oppositions. User apart from goods. Objects to higher fee for expediting applications. Whether all trade mark cases should be referred to one judge, 3179. Marks connected with the use of some patented or secret process, and what rights are obtained, after a certain number of years name becomes descriptive of the article. All that can be done is to register trader's own name in connexion. No objection to representations of marks being affixed to notifications of registration and the goods enumerated, and notifications should set forth the date of registration, 3184. Labels might be deposited merely to acquire a date; Comptroller's costs when wrong. Designs; amendment of section 47, new and original designs, classification requires extending, showing designs to persons refused registration on account of one already registered, 3189. Number of views allowed to be registered; suggested addition of the words "or such further number as the Comptroller may allow." Period of copyright. Putting the word registered on goods, section 51. Penalties on piracy of registered designs and what they should be, 3199.

Wednesday, 20th July 1887.

THE COMPTROLLER further examined.

Word marks in the tin-plate brands. No reason for keeping up distinction between brands and designs or marks. Geographical names, why accepted in relation to the tin-plate trade. Agrees that it would be expedient to amend the Act as regards defining the term fancy word or words, making it clear that geographical words cannot in future be allowed. Suggestion that in applications for marks or labels for tobacco, applicant should declare whether the name and address appearing in connexion with the goods are true and correct, 3301. Practices of the tobacco trade, and what the registry office accepts, 3313. Practice of persons registering their trade marks in a great number of classes although they do not use them, 3315. What remedy might be applied. Case of Whiteley, the universal provider, and registration in all classes. The "Aurora" mark and relative opinion of Comptroller and Registrar, 3322. Question how far Comptroller should stop marks for use in foreign markets. Difficulty in the practical application of any agreed theory where two or three persons have to carry out the provisions of the Act, 3324.

Wednesday, 23rd March 1887.

MR. CHARLES BAILEY (Manchester).

A member of the Trade Marks Committee of the Manchester Chamber of Commerce, and for 30 years has studied the question of trade marks for his firm, Messrs. Ralli Brothers. Whole of the Trade Marks Acts have been unsatisfactory to Manchester, 281. Complaints come under six headings, of which the first is the ignorance of the usage and course of the Manchester trade on the part of the London office, 283. That the office has registered headings and selvedges which is quite opposed to usages of Manchester trade, and have created a sub-class in Class 24 (velveteens), 284. Marks are those of merchants who ships the goods, not of the producer. The former obliged to use a larger number of marks than latter, 285. Infinite variety of quality numbers, impossible to register them Same quality of goods with different mark, 288. Mark to identify firm with shipment of goods put on a great many qualities, 289. Different marks required to prevent buyers clashing in the same market; protects the shipper, and indicates that the goods come from a particular firm, 294. Consumer, if he likes goods, does not order quality, number, or name of firm so much as the mark, 296. Practice multiplies the number of conflicting marks very largely. For the same class and quality of goods the trade seek to register several or many marks instead of one, 303. Whole of Manchester trade against registration of lined headings. Not registered now, 308. Character of stamping in relation to material, 309. London office do not know of the exact usages of the trade and the mode of applying the trade marks, 317. His firm has not registered their trade marks for the last four or five years, though using them freely, because they do not think registering gives enough protection, 322. Custom and courtesy of Manchester trade in respect to using marks infringing existing marks. 324. Sub-class in Class 24 for velveteen or pile goods. Difficulty of drawing line between cotton piece goods and pile goods, 335. Great point of contention that the trade marks registry in London are continually allowing marks to come upon the register which are colourable imitations, 339. What they maintain should not be registered are marks which in the eyes of practical men are calculated to deceive, that the line is drawn too fine by the registry, 341. Two directions in which houses might look at a mark, one to keep clear of its neighbours' marks, the other to go as near as possible to marks already registered, and profit by repute of same in market, 347. Case of two marks in which there is no one part of the one exactly like the other, yet calculated to deceive. Two drum marks imitated by a mark changing the drums into flower pots, 349. Opinion on the bicycle marks. If the prominent design is the bicycle in the second mark, consent of owner of first should be obtained. Limitation of number of objects that could be chosen. Frog on bicycle, possibility of being drawn so as to resemble a man, 356. Bicycle on tight rope, rope might easily in impression be confounded with ground; should not be registered, 358. Three dyers' marks. Similar occupation of the figures contrasted. A consumer does not remember the exact number of men engaged in dyeing. Owner of one of the marks which registry were willing to pass himself withdraws it, 365. Question of his reasons for doing so, 370. Variation in mark subsequent to registration as affecting validity; view of Manchester trade on the point, 381. Lithograph as a stamp to protect the label. Unprincipled dealers take labels off from a good quality of cloth and put it on a common quality, really sell on the stamp, 385. As to marks being registered in colours, 389. Case of the Indian gods. Second conflicting mark passed by Registry Office, but owner withdrew on learning the prior registration, 390. General appearance of a Hindoo god in a native drawing alike to the European eye, 394. Case of the wells, one with bullocks drawing the water, the other with a camel doing so. Main object, the well. It would be overlooked that there was a difference between the wells, superstructure one being wood, the other stone. Owner of second mark decided against himself, 397. What variations in a "well" mark would constitute a good mark, 401. A man being registered as a mark would not preclude any other mark of a man being registered, 405. Difference of nationality in marks, 410. Variability of decisions of Registry Office, 413. In some instances nationality or class is held a distinguishing feature, in others, not. Chinese football mark. Effect of printing in colour, accessories to the leading idea of the mark. Owner of the alleged conflicting mark having been registered, disputes the case at law, but ultimately withdraws, paying costs, 417. Would not object to a single person with a football in his hand as clashing with foregoing mark, 421. Question of registering name with stamp, 430. The "hen," a common mark. The sitting hen registered. Not a distinctive mark. Registrar suggested the words, 432. Skunk mark. Assent of owner of a beaver required before registration, 435. Considers a word a good part of a trade mark, 437. Instructions of Board of Trade to exclude letters and words, 436. Objection to registration of common words, *i.e.*, those common to the trade, 441. Endeavour to make a mark distinctive by the use of a word, 444. English name required in connexion with mark to ward off imitation by English competitors, 446. Object of words marks, 447. Device of real value in market where English language is not known, 449. Runjeet Singh. Common object to which a particular name was given which no consumer could read, 451. Marks put on register in virtue of qualifying words, 456. Question of making velveteens a distinct class, 462.

Basin's marks, as illustrating variability of decisions of London office, 465. Four face mark. Practice of trade in duplicating and triplicating a particular mark, so as to get as many marks as possible that are distinctive, 469. Marks of the billiard players, 471. Instance where difference of costume or nationality is held to constitute similarity of stamp, 472. Chinese letter writer's marks, 473. Sawyer's marks, 478. Royal personages or royal arms not registered, 481. Dogs with letters. Variability of decision cases of circle of dogs and circle of watches, 487. Illustration of severity rather than laxity of Registry Office as regards the skunk and beaver marks. The latter case contrasted with others, 490.

(Mr. J. Lowry Whittle attended Committee to give evidence as to a sub-division of Class 24.)

Saturday, 26th March 1887.

MR. CHARLES BAILEY further examined.

Submits additional marks. That of an Indian with hoop in hand, and two tigers about to jump through it. A second applicant applies for mark with one tiger or cheetah. But the first man has got the words "performing tiger." Mistake would be made in trying to distinguish between the two; second registered with consent, 631. Differences after a time between the two would not be remembered, 633. London office should allow the Manchester merchant to come in relation one with the other, 637. The "Three Rifles" mark contrasted with a similar mark where there is a shield overlapping the rifles. Union of common element, the shield with the first-class mark. Working arrangements between the holders of near marks. But the practice of London opposed to this, 640. Dog and scorpion mark. Dominant idea of mark, two dogs; scorpion would probably come out indistinctly, might look like shading of the ground. Scorpion a first-class mark. Office will receive common objects that are universal in the trade, and combine them with the first-class object of some other firm, so interfering with the rights of old owners, 645. Case of a man putting in his mark an element one-twentieth or less of the area of the stamp, and in virtue of that element appropriates an object already registered, and gets registration of a common object, 649. What the applicant for the dog and scorpion mark should have been required to do, 655. Dominant idea of a mark, 657. Passing of second-class marks with addition of other second or first-class marks, 662. Question depends on manner in which the objects in a mark are brought into combination, 673. Whether the close approximation of marks is due to poverty of inventor or to a desire to copy other persons' marks, 677. Group of merchants who do not steer clear of others and profit by their reputation, 678. In a large majority of cases the second applicant does not know of the already existing mark which is registered, 680. Instructions of the Commissioners of Patents of June 1882 to Manchester Chamber as to registration and relative to objects common to the trade in combination with private objects, 681. New mark should keep as far as possible from the old, 682. Custom of trade in putting marks on goods in Manchester. Separate mark for different customers in certain cases. Firm has thousands of marks, 688. Manchester Chamber has not been hypercritical in respect of Registry Office; old custom of the city to use trade marks to the extent and in manner they do, attitude of Board of Trade, 690. How friction can be got over what goods are shipped, 700. Question of confusion arising if Manchester mark were put on goods from Nottingham, 702. Cotton classes should be adjusted in Manchester as the natural centre; have nine-tenths of all marks in Classes 23, 24, and 25, 707. Friction comes from Board of Trade, not from Manchester merchants. London office accepting that which the trade say should not be registered, 710. Exact position taken up by Manchester, 711. Dog as a common object scratching himself, or dancing on a rope. Owners of first-class object, 717. Insufficiency of objects to supply the thousands of marks, 719. Man on a bicycle, one where the same is on a rope, latter indistinct. Merchants should be put into relation one with the other by the Board of Trade in respect of registering marks, 723. Tendency of London office to promote litigation, illustrations in support, 725. London office shoots over the head of the Manchester office, 729. Preliminaries of registration retained in hands of London office. Action of branch office as directed by President of Board of Trade in August 1885. What power should be in Mr. Fry's hands, 734. Work of latter ignored. Advantages of cases being heard in Manchester. Their confidence in Mr. Fry's judgment on a question of similarity, 738. Representations to be made through branch office; trouble, delay, and expense of personal application in London, 750. Shipping houses in London registering in Class 24. Final registration should be in London office, all preliminaries in Manchester, 757. What they regard as preliminaries, 764. Memorial of merchants in March 1885; representative of 75 to 80 per cent. of shippers of cotton goods, 769. Protection of opinion of official in Manchester by a body of experts, 771. More than three-fourths will be the marks of exporters not producers of goods, 773. Work performed by body of experts in view of Act, 1875, 775. Change of practice in London office. Difficulty where mark has been accepted by Registrar for the owner of, prior registered conflicting mark to arrange terms, 782. Suggested remedy. The Sawyer's mark. Water carriers, artists variations in drawing the stamp. Question of the accommodation afforded to applicants at the Manchester office. Might be an improvement by some re-arrangement of the whole sufficient, 793. Endorsement of limitation of user of marks. Question of alteration of the law to meet such cases. Severity of London office on this head and what Manchester wants, 798. Registration of Designs, limitation of time for, 817*a*. Difficulty of having a thorough search in respect of, as they run so much one into the other, 821.

Wednesday, 23rd March 1887.

MR. RUDOLPH DEHN.

Is engaged at Manchester in the shipping of goods to foreign countries. That officials in London are not conversant with usages of Manchester trade. That while registration of fancy words is in accordance with Act, that of common words is not admitted. Large number of word marks registered in 1884. Agitation commenced against specimens: Geographical "Santander," Mayo. or of estimation: "Le meilleur du monde": "Boulevard velveteen unsurpassable": "Best made in the world": "Second to none velveteen," or of quality: "Damassé," "Bordato Italiano," 497. Office has continued to register common stamps. "El Especial" advertised for registration now (under a mistake), 503. Registration of words for Class 24 should not be admitted at all, were not admitted by Act 1875, except for any special or distinctive word used before that date. Committee of Experts were against; Registrar began to accept such words after 1883, causing enormous confusion, 509. Why people send in word marks at all; trade relied on decision of Experts Committee, 511. Fancy words, definition of; views of Manchester on alteration of Act in this respect, 516. Trade never considered that there was any property or any value in words registered, 520. Practice of registering "Cautions" in connexion with marks, such as "Imitators beware," 524. Words by themselves, such as "Huntsman," 527. No objection to registration of a device with word underneath, descriptive of same, 530. Variable directions of Board of Trade on subject; how viewed in Manchester, 532. Dissatisfaction has existed since operation of Act, 1883, 538. Amendments he would desire in section 64 of the Act, 543. Concurs, and the Committee of Trade Marks fully concur, in Mr. Bailey's statements, 545.

MR. SIGISMOND ANTHONY FULDA.

Engaged in the export trade at Manchester, one of the Committee of Experts after Act, 1875, came into operation, 549. It was considered in Manchester that the Act would not work, looking to the great quantity of open and private stamps and trade marks which existed in Manchester. On representations, office for registry established in City, 550. Experts' Committee recommended by Chamber of Commerce, and appointed by Commissioners of Patents their work, division of marks into Classes A and B, 554. Act 1883 upset work of Committee, particularly upon word registration. Committee had decided that all words should be put into B class, 555. Certificates of refusal under, for legal proceedings, 556. Exclusion of headings from registration views of Manchester on, 560. Mr. Hoyle's case of registration, 562. Distinctive headings printed or woven, difficulties touching the latter. Confusion if registration were attempted, 568. Would not object to printed headings which formed a design, 571. His opinion on question of forming a body of experts to be consulted by Registry Office, and as to the old body, and satisfaction exposed with their decisions, 577. Does not think there would be any difficulty in now finding a committee of suitable experts who would inspire

confidence, 583. That whole of the work connected with registration prior to final stage should be conducted in Manchester, 584. How the work in Manchester office is performed, 597.

Saturday, 2nd April 1887.

Mr. EDMUND JOHNSON, F.S.S.

Is manager of the Trade Mark Protection Society and honorary secretary London Trade Marks Committee, 827. Principal difficulties under which trade mark owners suffer, uncertainty of procedure, varying instructions of Board of Trade, delay in procedure causes, word marks how used, individual trading under style of a firm forced to apply for registration in his individual name, disclaimers under the Act, eccentricities in practice in respect to word marks, certificates issued for foreign registration. Brands, subdivision of classes, 828. Complicated questions connected with registration, uniformity in practice required, adverse decision in the courts, a duty to rescue from annihilation a number of valuable word marks that have not yet been before law courts, 830. Illustration of varying instructions, slight experience of cotton marks, 834. Large number of marks in the soap trade, practice in registering words, 836. Question what is eligible for registration, illustration, flags, reigning sovereigns' names and portraits, as regards devices satisfied with present practice, uncertainty non-confined to word marks, 847. Details of delay in office dealing with applications, two months consumed before stage of advertisement, 860. Suggestions for amending, increase of staff, alterations of periods prescribed by Act. Searching Department of office, much care taken, 866. Applications increasing, fresh instructions create delay, and waiting for decisions of the court, 869. Time for making oppositions, 875. Instructions of Board of Trade to Comptroller, applicants to be informed as affecting their interests, 882. In application for a word mark it is considered the word is descriptive if Comptroller can in any way follow goods into their use, and by whom used, *i.e.*, mariner a bad mark for rum because sailors drink it. The "Electric" case, need of a fresh definition in Act, one suggested, 893. More extended use of word marks desirable, 895. Self-washer as applied to soap, 900. Wording of definition of fancy word, 904. Geographical description indicative of place of origin of goods. Equator recently refused in Class 47. Rousdon in Devonshire registered, 905. Glenfield starch case, Sir George Jessel's decisions under Act of 1875. All geographical words refused now except for tin plates, 909. Distinction between brands and devices. Applicants prefer to register their device and make themselves doubly safe by registering the word expressive of the device, 915. Individual trading as a firm must apply for registration in his own name, 921. Disclaimers in connexion with a registered mark, 925. Such terms as "Wilkin's best of all," "Rowe's best of Windsor Soap," "All imitators beware," their value and intention in registering, 940. Brands, "Wakefield crown," for soap refused, 942. Brands in tobacco trade, superior cigars, word marks as "Wizards," "Cheer Up," "Bound to win," 945. Number of applications in a year made by witness and number refused, 951. Subdivision of classes, suggestions under this head and as affecting fees, 961. A very large number of applications never reach the registration stage, only fee office gets is the first five shillings, proposals for altering this, 963. Appeals to Board of Trade on refusal of Comptroller to register, delay attending application to the courts, certificate of registration to be used in legal proceedings, amendment required, 966. Certificate for obtaining registration in foreign countries, separate payment required for each class, suggestion for amendment, 971. Inspection fees, Sheffield fees, 974. Registered proprietor of a mark required to make a fresh application when there is a change of address, cost of, opinion concerning, 981. As affecting Manchester marks, 984. Statement of user, 992. Consents in cases where registered owners are not to be found as relating to obstructions on register. Suggestions for amendment of procedure on this point, 996.

Wendesday, 20th April 1887.

Mr. EDMUND JOHNSON further examined.

Word marks, euphony and meaning, foreign words, some fixed principle should be laid down, 1001. Illustrations, office as present regarding meaning rather than euphony, what may have to be accepted under International Convention difficulty in laying down a rule. Official notifications of registration, for convenience of trade mark owners representation of mark should be affixed to form, goods covered by registration, 1018. Certificates of registration, requirement as to attaching copies of marks, what might be done, colours in registration, views of Manchester on, his own, 1022. As affected by practice in foreign countries, 1027. Existing practice of the office in view of foreign requirements, proposal to get information on the subject, 1040. Descriptive devices as a bullock for beef, coil of wire for netting, a hinge for hinges, cowl for cowls, ventilator for ventilators, 1044. Blocks occupying too much space in the Illustrated Journal, 1050. Possessive question, Pink's jam, Cross and Blackwell's pickles. Disclaimer of Liebig's name in a certain case, opinion on, 1060. The John Bull case, want of fixed rules at office, 1064. Suggestion that upon payment of certain fee a certificate for any purpose should be granted by office, *e.g.*, for proceedings in India, 1067. Suggests a Committee of Experts to advise office, how to be formed, division of committee, working of same, view of London Chamber Commerce on. Possibility of different view taken by the Comptroller and such committee, 1083. Forms in rules, statement of user, statutory declararion for old marks, 1094. Opinion as to appeals to Board of Trade, number of, procedure, 1103. Amendment of section 63, Act 1883, as to registration not completed within 12 months, notice should be given, reasons, 1106. Found impossible for manufacturers to avail themselves of sub-section A, clause 64, Act 1883. Added words, opinion on, 1110. Fancy words, such not upheld in appeal courts, recommends in section 65 the word "Classes," should be descriptions, registering under a series, section 66, 1113. Intention, procedure under, suggested to register in blank with a claim to vary, 1121. Assigning marks, 1123. Granting licenses, 1131. Registering old marks as affected by the new Act. Meaning of the word "exclusive" in section 73. Thinks the permission to disclaim portions of devices should be extended to new marks. Draft amendment of clause, section 75, addition of the words "application for registration," effect of practice, 1148. Certificates under section 77, as viewed by foreigners. Amendment of term, its use, 1152. Extension of powers of Comptroller so as to do away with need of going to the court; registration tantamount to user; deposit of labels or other printed matter and copyright, 1153. Large demand for this. Serious effect of decisions of the courts; cases in illustration, words "Gem" and "Jubilee," 1155. Geographical question in connexion with whiskey, trade mark brands in connexion with. Ansonia clock and Waterbury watch marks, ample choice of words without resorting to foreign languages, manufacturers complaints, 1161. Earlier practice settled by late Master of the Rolls, his decisions respected, satisfactory to trade mark owners; recommends one judge for trade mark cases; registrations under section 66, where a manufacturer is concerned in certain goods, 1162.

Wednesday, 27th April 1887.

Mr. EDMUND JOHNSON further examined.

Series of marks as illustrated by Bass marks, 1332, Whether compulsory registration may not be desirable. Great question at time of early legislation whether registration should be so. Summary procedure might be brought to bear by rendering it a misdemeanour to use a trade mark whilst unregistered. Trade marks in connexion with patents and secret communications. Title given to goods lapsing with patent right, or in case of a patent not being upheld, a secret preparation to which a fancy name is given as "Spirone," an unpatented inhalant. Status of such marks should be clearly settled by statute instead of being left to the courts, 1334. Apprehended danger in this particular case from possible decision of the courts, 1337. Beyond the functions of a trade mark to describe the process, to use the word indicative of the article. Suggestion made to proprietor of article, and manner of giving effect to it. Decision in the "Gem" case as injuriously affecting marks generally. Certain goods asked for by public under name of manufacturer wholly irrespective of trade marks. Sees the difficulty of dealing by legislation in a final way with points raised, 1342. Some fixed principle should be laid down for guidance of Patent Office as regards how far a descriptive element is to be

recognised in tracing the origin or following the use of goods to be covered by a mark, *e.g.*, "Navy" soap and "Mariners'" rum, 1344. Short phrases such as "Right Sort," "Cheer Up," "Honour Bright," does not see why these, if deemed useful, marks should not be registered, 1347. When there is not any user with a mark offered for registration, applicant should so specify in Form F. 1349. Question of increased accommodation at London office. Statistics of numbers registered as bearing on word marks. Trade labels, American law on. Summary of points brought forward in his evidence, and amounting to forty-nine, 1352. Feeling on subject of trade marks; ventures to look forward to a Bill in present session dealing with some of the questions raised, 1353.

Saturday, 23rd April 1887.

MR. JOSEPH FRY.

Is in charge of the Manchester Department of the Patent Office. Engaged in that capacity under old Act. Transferred to London, and there from February 1884 to August 1885. Subsequently returned to Manchester, 1166. Has to do with the cotton trade marks in Classes 23, 24, and 25. Trade marks in other textile classes are sent down for exhibition to Manchester. Search on application in his office, and refers to marks bearing in any way on those under examination. How referred to London office, 1175. Does not now report his opinion on the marks. Action on earlier instructions. Complaint of action of Comptroller as regards obtaining consents of owners of registered marks to certain new resembling marks coming on register, 1178. Agrees in the view that applicant for registration ought never to be requested to seek for consents, unless it has been concluded that his application must be refused unless he gets them, 1183. Instructions given him in August 1885, when Chamber of Commerce was informed he would return to Manchester office. Duties to be performed, 1188. Reported number of marks which he considered clashed with the mark applied for, and as to consent of registered owners, 1194. Question of assents premature until some provisional conclusion arrived at. What Manchester expected, 1195. Desire of Chamber of Commerce that firm and firm should be brought into friendly arrangement as to assents, trade arrangements, 1197. Consents might not be required to be registered in certain cases. His opinion on, and feeling of the trade, position of the office in asking for, 1206. How he might perform the work in Manchester, suggestion for removing friction, 1213. As to dealing with application from other places than Manchester, inconvenience arising from application to London office, if in Manchester personal applications in place of postal ones, 1222. Enormous correspondence entailed, in favour of the initiatory proceedings being taken in Manchester, 1224. Over 90 per cent. of applications for registration of cotton trade marks from people having branch offices or agents in Manchester, number registered by certain firms, 1236. Verbal complaints, consents by word of mouth, trade do not want correspondence. Manchester people would have been satisfied if the whole business had been left to him, 1244. Question of an arrangement which would not involve a duplication of work, depends entirely upon what basis work will be carried out in London, more common sense and less law required by Manchester, 1247. Difficulty of fixing principles to govern decisions in this particular trade, necessity of practical knowledge; Manchester feeling has always been to retain registration in London, 1251. Action of Manchester at the time of passing of the Act, 1875, formation of Trade Marks Association there, obtained the post of Secretary to that association, its proceedings. It was requested that cotton textiles in classes 23, 24, and 25 might be excluded from the operation of the Act. Representations to Mr. Lack at that time as to the admission of common marks to the register, as likely to lead to endless litigation, how the Committee of Experts came to be appointed, work of the committee, 1254. First and second class marks, division of, case of the Behrens "Bear Mark." Convenience of the court being the Palatine Court, so that evidence might be had on the spot from the trade, 1260. Three flag mark of Mr. Hoyle and Messrs. Henrichsen's application for flags. Board of Trade still willing to register three flags, 1269. Creation of some body of qualified merchants and manufactures to give an opinion on applications for registry, in favour of a body of experts, as to difficulty to secure appointment of, and whether they would give general satisfaction, Mr. Hoyle's dissatisfaction, line headings, 1275. How new Committee of Experts might be obtained to meet the case and satisfy trade at large, 1278. Merchants always willing to meet each other, confidence of the trade in office fallen away. When abroad gained considerable experience of working of these trade stamps, 1282. Need for extra staff in Manchester office, present staff, suggestions for increase and extent of, if all work were done there much relief in correspondence alone to London office, 1291. Number of searches and inspections, 1297. Office accommodation as to rearrangement or extension of rent; Illustrated Journal not of much use for Manchester marks, 1304. Question when a mark is brought for registration in colours an uncoloured mark should also be brought for record. Colour helps the examiner in seeing what is depicted, necessity of new marks to meet orders from abroad, practice of trade, 1310. The native will do everything he can to attain his ends, makes use of the name of responsible firm in England that does not know of existence of the conflicting mark, consent should be obtained before conflicting marks are allowed to go forward for advertisement, 1314. Present objection of Manchester firms to register, suggestions for using marks in B. List, 1316. Number of applications refused, Mr. Lack's inspection of trade marks in 1879, at Manchester, subsequent directions of the Master of the Rolls, Sir George Jessel, opinion of latter that honest trader would take a mark as far away from registered ones as possible, 1324. Resolution of committee experts that no firm should be allowed to apply for private mark of another firm as forming a portion of a new mark, 1325. Question whether, if excluding all such common objects, it would be possible to get new marks. Is of opinion that a hard and fast line should not be drawn, let the applicant go and make an arrangement with owner of clashing mark, 1326. Pleiades mark, variable action of office on. On original application drew attention to two existing marks, his notice was not attended to, dissatisfaction of firms concerned, 1331.

Wednesday, 27th April 1887.

MR. ERNEST DE PASS.

Contends that the Act 1883 does not provide for the system of examination now held at the office on application for registration of a design. That Comptroller is not empowered by section 47 to compare designs one with the other on question of infringement. Should only refuse one which is not a subject for registration. Thinks there should be no examination at all, 1358. His clients would be willing to go to the court if their rights were infringed, 1359. No trouble under the old Act, no search, no examination, should be as a patent application, if a design is refused registration, applicant cannot see the design he is supposed to infringe, procedure required to ascertain whether a new design will infringe some other, 1366. Delay in registering designs, rapid procedure under old Act, causes of delay, uncertainty as to registering inconvenient to trade, 1371. Acted as agent for two clients, one having design in shape of a stirrup, the other a horse-shoe. Was thus aware of the obstructing design, and able to get over difficulty with the Registrar, 1373. Only allowed by office to show two views of an article, suggestions for meeting difficulty, 1378. Why designs may not be inspected, why kept private during copyright, possible reasons for this, 1383. Difficulties that might arise if there was registration without examination. Search would be made by agent to see if a design existed which clashed with one proposed, 1393. Requirement of office to strike out part of a design, though such part is not omitted in the article actually sold, that disclaimer would be sufficient, 1399. Why registration of sculpture was abolished, 1418.

MR. JOHN STAREY.

Is secretary of the Trade Mark Owners' Mutual Protection Society. Delay in dealing with applications for registration of trade marks. Result that the marks applied for cannot be protected abroad, and they are pirated, 1424. Question whether office is undermanned, 1427. That some arrangement should be made for marks to be advertised within a certain time, and as to the issue by office of a double number of journal, 1431. Difficulty of owners of marks to say what is a fancy word looking to decision of the courts. Specimens of advertised marks, *e.g.*, sublime, famous, sensitive, which cannot be fancy words. Hard seam as applied to tobacco refused by Comptroller.

Inability to obtain a certificate for foreign registration except in the colour in which mark was deposited at

registry; a serious matter, as in printing off a large number of labels the colour varies; cannot therefore register abroad, 1437. That marks calculated to deceive are put on register, examples, 1443. Act does not provide for applicant, if successful, getting back the expenses of opposition, class of applicants who send in marks as close as they possibly can to registered ones, 1446. Suggests that if people do not re-register at end of term of protection their marks should become public property, 1451. Applicants in Sheffield or the district of Hallamshire have now to pay double fees in certain cases to those which a Birmingham man has to pay, 1452. Necessity of obtaining fresh certificates from office as legal proof that a mark is registered, 1457. Fails to see why marks in the cotton classes should not be advertised, unfair to require blocks in one case and not in another, 1460. Priority of claim under treaty in foreign countries, want of an Act in Channel Islands, 1462. Opinion on appeals to Board of Trade. Action of Cutlers' Company of Sheffield, question of obtaining costs from them in oppositions, 1469. Fancy words, against the registration of short phrases, word marks generally. Fees should be higher, especially on application, 1478.

Saturday, 30th April 1887.

MR. ISAAC HOYLE, M.P.

Is member for one of divisions of Lancashire and governing director of house of Joshua Hoyle and Sons, Limited; has an experience of trade marks for above 23 years. Adopted a mark in the first instance in the home trade, telling customers it was for the goods only made the original length and width, and with the "heading," &c., so that they should know that without the heading the trade mark would be an imitation, 1487. Description and specimen of a heading. Afterwards adopted marks in connexion with export manufacture, 1492. Experience of infringement of headings in the latter trade. Has continued using headings for both trades, 1497. Cannot register them under Act 1883; his firm has now 2,412 on their private register, is of opinion they could be registered and protected; cannot register colour under the Act, 1505. As affected by the merchandise marks (criminal) law, 1509. Headings insisted on in the trade, their cost, 1518. Thinks they should be registered as trade marks, not designs, 1519. Advantage about headings that they cannot be tampered with. Number of stripes showing quality, 1524. Hardly any end to the ingenious way headings could be manipulated if protected by law, 1527. What he considers would be a colourable imitation calculated to deceive, 1531. That no heading should be registered that is not clearly distinctive, 1532. Opinion as to the difficulties of registration, might be manufacturers' and merchants' headings, 1538. Reasons why the quality of manufacture has improved, 1544. Thinks the cutting out trade applies more to the merchant than to the manufacturer, 1545. As to suggestion that a design might be introduced into a heading, 1548. Effect of legal recognition of distinctive headings, object of, case of a manufacturer producing too good an article, merchant who bought goods, and eventually built up trade registered heading, so as to avoid possible necessity in future of putting on another manufacturer's cloth, 1551. Joint interests of merchant and manufacturer, 1554. That a trade mark is either of permanent or temporary value, according to way in which it is used and the quality of the article sold under it, 1559. Concurs in some respects in the conclusions which the Manchester chamber have put before committee, but differs on the point that the chamber desire to have control of the administration of the Act in Manchester. That Registrar should not be subject to sectional influence. Interests of producers who are a larger class than merchants to be studied, should be a central authority to decide impartially, 1564. Opinion as to creation and constitution of a committee of advisers, 1570. Action of the old Committee of Experts, what amount of satisfaction their decisions gave, committee from its constitution unable to do strict justice, 1571. Opinion as to uncertainty in registration and admission of marks calculated to deceive, pressure on office from the merchant class, 1572. Number of producers who now register marks, difficulties in the way, should be allowed to mark his goods when they leave works, example of a heading put forward, 1577. Neither merchants nor manufacturers should have control or preponderating influence in the administration of Act, 1580. Dangers that might arise from appointment of a Committee of Experts. Decisions of such committee from 1877 to 1879, influence of Manchester in, 1589. Bleachers' marks, their use, 1590. As to goods bearing a manufacturer's, a bleacher's, and a merchant's mark. Matter of arrangement, illustration of, 1593. As a general rule, merchants object very strongly to manufacturer putting any mark on his goods to show their origin, 1596. Is against the earlier stages of registration being conducted in Manchester. Suggested improvements in the Manchester office, 1597. How far his views are shared by manufacturers generally, 1598. Does not think that merchant should have his way in objecting to manufacturers putting a mark on his goods in view of the general interests of trade in the country, his reasons, 1599. Is of opinion that the most perfect machinery and most skilled workpeople will produce the best goods at the cheapest rate; illustrations in support of statement, 1604. If a merchant puts a stamp on an inferior quality of goods, trade is injured, and foreigners are given an advantage, 1610. What number of manufacturers are merchants, increasing; in some cases put on their own trade mark, in others not, 1613. Thinks it more advantageous that a shipper who has had his mark infringed should be compelled to come up to London and there defend his case, than do so in Manchester, as it could not be settled equitably in latter city, 1618. Does not think that it should be open to merchants to come to arrangements between themselves for registration, because that depends not on the merits of the case, but upon caprice, case in point; the responsibility should rest on the Comptroller, 1621. No mark should be registered that is not distinctive, 1623. Question of consents an intricate one; position of a poor man the owner of a mark he wishes to register, case fought against Committee of Experts at very serious costs, particulars of same. his opinion that the court should be supreme, 1632. Thinks there would be less mischief done by a strictness in refusing than by laxity in admitting new marks, 1636. To what extent he differs from Manchester Chamber. Thinks a Committee of Experts would exclude marks that ought to be admitted, and would harass the applicant to the injury of the community, 1642. Public opinion as affording a check. Decisions of the court in London, and on appeal, 1645. Statement that there was no difficulty whatever in a merchant finding some mark which could be regarded as an imitation of another stamp as making registration impossible, and illustrating the danger of any one body of men administering Act, 1646. Questions advantage of permitting registration of fancy words, 1647. That appeals should be heard in Manchester, the Palatine Court having jurisdiction. Where a mark is distinctive applicant should find it easy to register false marking of lengths. Is easily detected where a manufacturer delivers a shorter length than contracted for, but different where goods have gone 3,000 miles, 1654.

(For précis of further examination *see* page 221.)

MR. ALFRED JULIUS BOULT.

Thinks it would be a most excellent thing if the designs register were open to inspection. Is not acquainted with history of old law, which was similar; thinks that the calico printers objected very strongly to the designs being exposed to the public, should be put in the same position as specifications of patents, 1662. Suggestion for meeting difficulties of giving effect to recommendation, 1664. Delay in registering at office very prejudicial. Complaints from manufacturers on subject, 1666. Some system of classification of designs should be adopted, 1667. That a simple and cheap form of opposition should be allowed, 1668. Thinks that the Comptroller making a search in the matter of similarity of designs is very useful and easy on a good classification, 1671. Trade Marks. Cannot see necessity of a fee being demanded for searching registers; should be thrown open to the searchers. Should be an alphabetical index, 1672. Sacrifice of original date of application where some part of a trade mark applied for is found inadmissible by office, 1675. Notices to owners unnecessary, 1676. Cannot see why it is requisite opponent of mark should have to enter into bond for 200*l* Reasons for, 1679. That any hearing in opposition should be before Comptroller, as in the case of patents, 1680. Complains of inconvenience of rule that sums of over 1*s*. must be paid by post office order. Office will not take cash (except for searches). That appeals on refusal to register should no longer be made to Board of Trade, but Comptroller should decide in first instance, and then refer to the law officer, 1688.

MR. CHARLES HENRY NEVILL.

Is a feeling in the calico printer's trade in Manchester that clause 47 of the Act of 1883 is not clearly defined as

regards a new and original design, 1689. Where difficulties may arise, suggested definition for clause, and also as to what constitutes a fraudulent imitation, 1691. Knows general outline of the case of Grafton *v.* Watson, but never saw the designs, 1692. Calico printers divided into two classes, those who do not wish to be copied and those who wish the Act framed to come near designs of others. Is against the wish of some of the printers to register every style, as it is not the intention of any Act of Parliament to hamper a general trade, 1694. Reasons for an amendment of clause 51 of Act, 1883, requiring stamp on pieces manufactured. Have to keep record of patterns that require stamping as registration only lasts four years. Useless the moment goods leave, no protection to public, 1698. Against designs at office being open to inspection, but sees no objection to limited alteration of section 52, that where there is a rejection of a proffered design on ground of an existing registered design clashing therewith, applicant should be permitted to see latter, 1701. That open designs would facilitate copying. Large number of calico printers who live upon the goods already going in the market, and come as near to them as they possibly can, 1706. Suggested amendment of clause 58, Act of 1883, so as to get at the man who brings a printer designs, stating they are original when they are not so, to pass the printer and go direct at the merchant. That is the view of the principal calico printers in Manchester, 1709. Question as to interpretation of the words "every offence" (s. 58), 1722.

Saturday, 7th May 1887.

Mr. J. LOWRY WHITTLE.

Since the passing of the Act of 1883, has superintended the administration of the trade marks portion of the Act under the Comptroller. Was for several years a member of the Bar. In 1876, was appointed Assistant Registrar of Trade Marks and Designs, with the duty of assisting the Comptroller generally. Was appointed Registrar in Lunacy in 1880. In 1882, returned to Patent Office, and resumed duties he had previously discharged as regards designs and trade marks, and in addition similar duties as regards patents. Arrangement made by the Board of Trade, after passing of the Act of 1883, that he should be relieved of responsibility as respects patents, and have a special responsibility in relation to trade marks and designs, 1723. Assumes that the question of abandoning the duty of office to distinguish between one mark and another is not at present taken up by Committee, 1725. Explains his idea of a trade mark and its nature; decisions of the courts, 1729. Submits that what is a trade mark and what is a conflict between one mark and another must be arrived at by the Comptroller in the discharge of his work, 1730. The idea that putting the two marks together, and judging them simply without trade and other considerations, would settle the question. If not the legal view, yet the popular one. The phrase "taking the mark as a whole" is just as often used in favour of an application for infringement as in favour of the doctrine that there is no resemblance between the two. A very distinguished authority admits that a great knowledge of law is required in interpreting s. 64 of the Act. The term "brand," as an example, 1733. Directions of Board of Trade on subject. Does not think there is any difference between a brand and device or mark. Variety of the terms merely an indication to the public that they might come in and get the benefit of the Act for whatever they called the sign of their goods. In Class 5, including tin and turned plates, the office take names, geographical and otherwise, such as "Truro." Action of the Board and office in regard to brands, 1743. What marks have been accepted under sub-section *a*, clause 64. Section 72, which provides that the Comptroller shall not register a mark identical with one already on register. Under present Act the court has followed the old practice of permitting registration of three marks, 1745. Section 73 of Act, 1883, has not been of much practical use; as to its intention, 1749. Interpretation of s. 74, refusal of what office recognise as a distinct element being common to the trade in the way of a device. How the office, in his opinion, must deal with the difficult question of resemblance, 1750. The office, to a certain extent, ought to consider, in the case of the Manchester goods classes, the customs of the export trade and the fact that the marks are used in foreign countries, 1751. Tendency of office to lean in favour of accepting marks. The first conception of the Comptroller's duty is to accept, 1753. Evils that may result from too ready an acceptance, 1757. If there be a reasonably distinctive feature in the mark calculated to deceive the trader abroad, would reject it. Would endeavour to follow the trade mark as far as it extends, 1763. Question of resemblance; case of Scixo *v.* Provizendi and others bearing on this point. Appeals, trade marks, ought to be continuously in the hands of one person; the idea with which he was entrusted with work in 1884. Constant knowledge of a variety of details which must be kept up, 1764. Thinks if marks are carefully considered, the inability to discriminate between one and another would not happen in one case out of a thousand. As to the rule which guides him, 1767. Appeals to the Board of Trade discussed with its solicitor; action of Board in matter. Opinion as to the views of the public on these appeals, and their value. Interpretation of their duties by Board in 1884 and early part of 1885, 1777. Opinion on suggestion that if the Comptroller's decision be not accepted, then case should proceed by appeal to the law officer, as is done with patents. View of Sir Thomas Farrer on the work accomplished up to the middle of 1885. Comptroller's evidence before the courts under the old system; the latter have the benefit of expert evidence, so to say. What impression a mark makes on the memory, to help the consumer to find the goods he wants. What forms a true combination of marks are opposed to a mere collocation. An alligator and a man together not a combination; an alligator with a man in his mouth is. Reference to the "Normal" case; Comptroller's contention in that case, 1778. People do not use a single mark and stick to it in one form, but work it up in their labels in a variety of forms. "Bass'" and "Wills'" marks, 1782. Has had a good deal of work in connexion with Manchester from an early date with the Comptroller. The Committee of Experts. That some experienced official might have been sent down to Manchester, who, with some assistance from persons of local trade knowledge, would in a few months have put the matter on a satisfactory basis. Enormous quantity of the Manchester marks, tax on owners to register, nature of marks in the second class, very large portion not trade marks at all. Variable action of the authorities embarrassing to the public and to the working of the Act, 1786. In regard to the feeling of Manchester, thinks that the new branch of the law requires to be worked out in a central department, and under personal control to a certain extent. Time has not come for the decentralisation of the Trade Marks Register, 1787. A great portion of the business in the cotton classes in Manchester. Mr. Fulda's evidence and the action of the Committee of Experts, 1788. His opinion on certain suggestions for amending procedure in applications in the cotton classes to meet the complaints of Manchester. Thinks it would be a return to the difficulties in connexion with the Experts Committee. Commissioners of Patents took the finding of that committee as final; reference to the case of Orr Ewing *v.* Johnston, 1792. Sheffield, though having its own administration, is on different lines entirely. Conducts its work altogether under direction of the Comptroller, 1793. Opinion on suggestion for amending procedure of the Manchester branch office to meet complaints of the trade; what was done in this direction in 1876 provoked great opposition. Number of marks taken out of B list from time to time. Views and action of Mr. Fry at the Manchester office, 1797, in respect of the decisions of the courts under existing law, 1799. Specimens of marks illustrating the arguments advanced, 1811. As to the courts having as yet obtained full information touching the customs of the trade and effect in foreign countries. Would facilitate the work of registration if the principle were laid down that it is the duty of an applicant for a new mark to find out a distinctive mark, which an honest man would wish for, 1815. Proportion of marks in conflict larger in the cotton than in other classes. Statistics in relation to this, 1820. Large proportion of marks in cotton classes sent in by comparatively new names. Large houses that do not now apply for registration, 1823. Opinion on suggestion that a certain amount of decisions given on the spot by an advising body would meet the complaints of Manchester and simplify matters. Appeals against decisions of Committee of Experts. The B list and what it contains, 1829.

Wednesday, 11th May 1887.

Mr. J. LOWRY WHITTLE further examined.

Thinks one month would be a sufficient time for advertising applications as respects England, and as regards the period for lodging counter statements one month would be

sufficient, 2006. Opinions as to alleged unnecessary large blocks for advertising applications, 2010. Single individuals trading as firms, whether applications should be accepted by office in name of firm, 2012. Opinion on formation of trade committees to assist office with advice on trade questions. At present consult associations where existing in connexion with trades, *e.g.*, the Wine and Spirit Association, 2013. Labels; cases when a certificate is applied for and owner of a mark has no more of the registered labels, and suggested remedy to meet difficulty, 2015. Acceptance of representations of goods as trade marks, a question discussed with Sheffield from time to time; how far the Comptroller felt the Act empowered him; result of an appeal to Board of Trade in respect of stoves, 2019. Suggested publication of directions of Board of Trade to Patent Office, given under section 82 of Act 1883, 2020. Thinks that the word "brand" is used as the equivalent of a trade mark in section 64; directions given to office on subject of registration, 2027. Does not think there is a practical want of the introduction of a rule to allow registrations of old marks up to the number of three without resorting to the court, 2030. Whether on change of practice a refused applicant under former practice should have notice that a new applicant is submitting a similar mark to his own, 2032. Doubts if it be desirable that applicant should be required to state for what length of time (if any) he has used his mark. Might be made a simple statement in the advertisement, 2034. Opinion on suggestion that user in connexion with goods might be shown by way of a price list; show cards. Special object of a trade mark is a mnemonic (something which, produced to the mind, gives you the idea of that which you wish to recollect), 2037. Practice as to added matter in view of the provisions of section 64, and Comptroller's opinion on, 2044. Substituted service or notice where the registered owner can no longer be found at the registered address, 2047. That it is a question of general policy whether there should be only one judge for hearing trade mark cases, 2048. Protection in the use of marks as a whole when portions are omitted in registration, 2049. Thinks if there is any doubt whether the provision of s. 66 is legal it would be desirable to clear up the point, 2052. As to suggestion that, as in America, a copy of the mark should be attached to certificate or notice of registration, 2057. A matter of policy, and mainly of fees, whether one certificate not limited to particular legal proceedings should be obtained for general use, 2062. Certificates of refusal to register, their present wording, and way in which they are regarded abroad, 2065. Disclaimers of common devices could be usefully published in official journal with the applications to which they refer, 2068. Fees and work done for applicants not proceeding to registration, amount of work done, and complaints of delay, 2073. Subdivision of classes and present practice of office in this respect, the arrangement of subdivision and classification a tremendous enterprise. Whole question of classification will require consideration when renewals come on. History of the classification, what was done in the case of velveteens, 2092. Does not agree in suggestion of a higher fee for expediting an application, no necessity for if business is brought up to time, 2093. Certificates for use in foreign registration, smaller fee for change of address being registered, search fees, 2098. Complaint as respects an applicant having to apply to London and Sheffield touching the same mark and having to pay double fees, that there has been some misapprehension in the matter, 2105. Notice of abandonment of application to agent of the applicant or failing completion to applicant direct. No harm in such a rule, operation of section 63 requires further consideration, not brought into distinct working yet, 2106. Rather favours the suggestion of reducing the area of the class than altering classes into descriptions, 2107. Whether an applicant should be able to include other classes of goods than those for which he puts in his claim, very difficult to work, 2111. Amendment of section 67 to meet any doubt of the courts recognising "colour" as including "colours." Opinion on wording of section 69 whether the word "first" before advertisement should be omitted, 2113. Suggested amendment of section 75 by inserting before word registration the words application for; reasons against, 2116. Suggestion that the sanction to grant licenses, so far as trade marks are concerned, should be taken out of section 87. Seems most important. Powers to Comptroller for rectifying errors, 2117. Opinion as to the proposed deposit of labels; suggests for consideration some amendment of the present system of deposits and protection at Stationers' Hall (as copyright) to be applied to them, 2118. Provision of Act, 1883, admitting words as marks entirely new. Office experience of words under the Act, 1875. Certain words accepted by the Comptroller. Representations of witness to the Board of Trade. Directions of latter. The great number of word marks sent in. Various consultations held with Board. Word marks necessarily weaker marks than devices. Quality of such marks as indicated in observations during the case of Siegert *v.* Findlater. Demand for such marks in view of advertisement. Views of Sir Thomas Farrer on, 2125.

Saturday, 14th May 1887.

MR. J. LOWRY WHITTLE further examined.

The various heads of Mr. Bailey's evidence on the part of the Manchester Chamber of Commerce. Period up to change in view of Board of Trade. Patent Office shelters itself under reading of section 82 of the Act, 1883. Attitude of Manchester Chamber of Commerce towards Patent Office. His visit to Manchester at the end of 1884. Different aspect of the complaint of Manchester in April 1885, from that presented now. Views on the bicycle marks previously submitted to Committee. Is of opinion that the one on a tight rope is not sufficiently distinctive. Mark should have been refused, 2128. Protection given to a trade mark as deposited and registered, and if a man metamorphoses his mark, office cannot be responsible. Courts have directed this to be kept in view, 2129. Has been pressed upon the office that they are straining the Act in favour of a trade view in refusing headings. Is of opinion that headings can be distinguished one from another though more difficult than distinguishing between ordinary devices; they are marks for the middleman, 2130. Cannot be registered so far as dependent upon distinctions of colour; office has relied upon this as disposing of question for the present, 2133. Would require an expert to distinguish them; minute variations, a totally different class of marks and very difficult to deal with. Agrees that if registered, colour must be taken into account for a portion at least of such marks, 2138. Selvedge case (Lister's) ultimately refused by the Comptroller, 2142. Is aware that a good many Manchester houses do not search register before adopting a mark, 2149. Headings not a class of marks witness would desire to have. Office would be very much in the hands of experts in dealing with them, 2152. Pile goods and non-pile goods. Affidavits the Comptroller relied on in respect to distinguishing pile velveteens as a description of goods. Would take an ordinary piece of sateen for registration as cotton goods, 2157. Figured headings and their registration as designs. Not registered to the same extent as formerly. Dhooty borders referred to by Mr. Bailey, applications very much diminished. Must assume a certain amount of intelligence in use of trade marks. People in sunny climates more acute in seeing differences and more suspicious, 2164. Is for considering the distinctive feature of a mark, must not speculate too much about its use. If a frog be changed in the pressing of the stamp to look like a man, then mark ceases to be the one registered. Dyers' marks, their acceptance affected by Board of Trade directions as to judging the mark as a whole, 2166. The "Indian god" tickets; of opinion that the natives can distinguish between one god and another. Opinion of the case of "Wells in the Desert" football marks, Chinese and Indian players, distinctions that can be drawn, 2170. Sitting hen mark, skunk mark, 2180. Office has been constantly asked to insist on applicants disclaiming ordinary words appearing on their marks. Comptroller has always refused. To disclaim "first quality" or words of that kind would be a frivolous interference, 2182. As to conflict between sections 64 and 74. Applicants complaining at being asked to disclaim. Some owners want to exclude everything that could possibly be covered by the B list. "Runjeet Singh" mark, 2187. Number of marks of mounted Oriental personages refused by Committee of Experts. Are a number of cases in which he is compelled to differ somewhat from Mr. Bailey. The "Basins" mark and four-fan border, complaint that consent was asked for in one case and not in another, 2192.

Wednesday, 18th May 1887.

The case of "Hughes" as governing the action of the office touching many of the points taken by Mr. Bailey. Legal decision guiding the general policy of the Comptroller in dealing with the B list up to a certain point. Mark of an Oriental figure, compared with one in B list, and with mark of Messrs. Ralli Brothers; objections of

latter firm on the ground of its being like other Oriental figures, and also that the "Box" appearing was one of their registered marks, they refused their consent. Appeal to Board of Trade, their decision, mark to be presented in colour, and registered, 2254. The "Normal" case; procedure of Board of Trade in matter. Reference to cases decided upon by the courts. Orr Ewing *v.* Johnston, label restrained by injunction, 2256. Minute of the Baron de Worms of December 1885 on new Civil Service trade mark taken together with the Normal case, that a mark should be considered in its entirety, 2258. What forms a true and original combination. Marks produced to the Board at conference to make sure the office rightly comprehended directions of Department, 2263. Two elephants carrying a globe would be passed, while one elephant and one globe would not be; examples of combination, 2277. Whether there should be an index of refused marks for reference, 2282. Further discussion of the Framjee Sands (Oriental figure) case, and the Normal case; must look at the balance of a mark. The principle laid down in the Board's directions has since been qualified a little wherever it could be done, 2303. Thinks it desirable there should not be consultations between Comptroller and Board of Trade unless to lay down some general rule; appeals to Board. What was intended by the provision of sub-section 3 of section 82, "under the superintendence and direction of the Board of Trade," should have thought it meant the general direction, not the determination of special cases coming before the Comptroller, 2320. Opinion on suggestion that designs should be registered without any examination on the part of office; general opinion against Designs being open to inspection, but a man tendering a design when refused registration should be allowed to see the design blocking his way; searches and giving information to applicants, 2332. As to the practice of putting the name as a distinctive mark (although not capable of registration). Many old marks and common ones passed with this addition by the courts, 2334. Has sometimes happened that the addition of a name has been regarded as rendering one mark sufficiently distinctive from another, 2340. The case of the "rifles" marks mentioned by Mr. Bailey. One of the applications governed by previous directions of Board of Trade, 2350. A great number of the cases brought forward by Mr. Bailey would turn on the mark of a Japanese figure with a tortoise; question of consent of owner of previously registered mark accepted by direction of Board without enforcing condition of consent. Japanese stork marks, minutes of the Comptroller, and also of the solicitor of Board of Trade on. That it is for the applicant to inform the office what his mark is, and means, and to clear up any difficulty. Portraits of Royal personages tendered as marks, 2360. As connected with goods in cotton classes, where the natives could not distinguish between one and another, whether the name has been considered an integral part of the mark is a matter for the court. Names of distinguished persons registered as fancy words. Those in the B list. It has been found that persons do not like giving their consents to one person and not to another. One or two cases in which the Comptroller could not in any way agree with Mr. Bailey. Circle of dogs' heads with letters in their mouths accepted, but circle of watches refused. No dog's head in the B list with letter in mouth, 2394. Mr. Bailey's charge of variableness of decision. Really not dependent on the action of the Comptroller, 2398. Representations of Manchester alleging an alteration in practice of the London office. On the whole the working of the Act satisfactory. Satisfied the practical work of the trade at the earlier date (*i.e.*, 1884–5). Discontent very much less. Cordial co-operation of Manchester would have been most useful to the office. Question of the "selvedge" a point where their aid was most important. Difference of opinion between Mr. Bailey and Mr. Fry as to whether it is easy or not to find new marks. Feeling in 1876. An influential and important section of the trade believed that registration in any form is rather a nuisance. Local feeling in favour of the Manchester working of the office. Opinion as to the practicability of the Comptroller being guided by the decision of some one in Manchester. How it would be affected by the action of the Courts. Attitude of the Trade Marks Committee of the Manchester Chamber at the passing of the Act, 1883. It was thought, in view of Mr. Fry's technical knowledge, that his being at London office would meet difficulty. Terms on which he went back to Manchester and nature of his functions somewhat misapprehended. Qusstion of obtaining assents of registered owners. Limitation of and actual practice of office. Doubt on this head has arisen from misconception of Mr. Fry's work. Further, as to the attitude of the Manchester Chamber at the passing of Act, and subsequently, and as to the Chamber being unanimous. Thinks that the action of the State generally has aggravated the matter very much from beginning to end, has been very uncertain and fluctuating. Is not of opinion matters would settle down if there were some undefined extension of the local powers; any such arrangement would be a half-way house, and damage the general working of trade mark registration. Contends that Mr. Fry's objections are founded on his knowledge of the resolution of certain firms to object to marks which witness does not think the court would support. Large owners over susceptible as to their marks (or their clerks or servants are). Questions, for reasons advanced, whether the work of the Committee of Experts did give on the whole general satisfaction. A lot of things in the B list, which were not within the instructions given to that committee. No attempt to revise this until decision in case of Orr Ewing *v.* the Registrar in the House of Lords. If the experts had been guided a little as to their view of the law, instead of what they thought useful for the trade, scheme might have worked well. A case illustrating point, "Fakir" mark, possibility of a *modus vivendi*, suggestions to that end; trade mark system must be brought into better order. Periodical visits of the Comptroller to Manchester, introduction of the Palatine court desirable, Committee of Experts to advise with defined powers; if such arrangement is not acceptable, would suggest the old plan of excluding cotton marks from registration altogether. Precise views of Mr. Bailey and the Chamber on the latter suggestion. Development of the trade mark system for the past 10 years, since the passing of Act, 1875, all over the world. Decision of Mr. Justice Kay bearing on the point that user should be on the goods. Name of applicant with an apostrophe, *e.g.*, "Brown's Ointment," allowed; reasons for, 2445.

Wednesday, 15th June 1887.

Mr J. LOWRY WHITTLE further examined.

Explanation with regard to the number of marks dealt with by order of the court out of the B list. Words such as "Health Belt." Consultation with Board of Trade early in 1884, and such words as "Unique" were considered safe. Prefixing the article to the word "The Perfect," "The Excellent." Almost any dictionary word passed for a long time, or any name where applicant would prefix the article. "Alpine" case where applicant refused to prefix "the." Court held that the arrangement was preposterous. Suggested appeal, but time expired. Consultation of the law officers later in the year, who advised that a much more restrictive system should be introduced. Registration of word "Alpine" as opening the door to all sorts of geographical words. "Domestic" for tea, grounds of acceptance. "Universal Provider," a registered mark for use on goods, or their cases, 2820. "All the Year Round" needle case, "Society Needles," "The West End Needle Case," 2823. General similarity in colour and general aspect of two marks in an example submitted to the Committee on Merchandise Marks. Sequence of colour remarkable. Comptroller could not have refused them as the law stands, 2825. Thinks it would be very safe to make it a penal prohibition to infringe a mark in this manner. Why under the Act, 1883, colour is not registered; suggests that there is no occasion to exclude colour from being part of the registration, 2832. Suggestions for amending the Act in this particular and difficulties in the way, 2849. As respects words, the original theory was to exclude all dictionary words, to go on those invented, complicated by the principle they were not to be descriptive. "Valvoleum" held to be an ordinary descriptive word, "Valve Oil," and was not protected against "Velvoline." Further complicated by the International Convention arrangement and the importance of foreign words. Primary value (before question of advertisement) of a word mark was to protect the name of a device; "Vulcan" case in point. Illustrations of the difficulties in connexion with foreign words, 2850. The word "Yum-yum" refused; appeal to Board of Trade. The firm of Pinet registering the word "Tenip," thinks a descriptive word a good fancy one, believes "Dislixum" has been registered as part of a mark; makes a very good word. Claim for an "Owl" from people trading in Japan; word "Koko" sent in, on inquiry found it was Japanese for an owl. Opinion on suggestion that an affidavit that the word applied for is not foreign or in use in any language, or its meaning. "Zoedone," "Eno's Fruit Salt," "Trio's Fruit Essence." Opinion on Mr. Cutler's suggested definition of a fancy word an arbitrarily selected word; outside the spirit of the law to

have a mark which suggests what is not true, 2864. A great storehouse of invented and preposterous words, those registered for telegraphic purposes; submits a form of definition for consideration of Committee, get rid of word "fancy" and "distinctive." "Panklibanon" bedstead used for advertisement purposes. If content with a mere agglomeration of letters there is danger of giving away somebody else's property, 2869. Opinion on suggested word "Sociology" for sauce, "Home Rule Soap" as a mark for domestic goods, 2874. Would admit "Redistribution" as applied to clothes; thinks it was unfortunate "Melrose" could not be accepted. The "Glenvoy" case, 2879. Thinks there are obvious objections to registering phrases such as "Cherry Ripe," "Bound to Win," "Honour Bright." Idea of the mark not the real test of resemblance; the Committee might deliver some opinion as to the considerations to be taken into account in applying such test; submits that the Committee might pronounce for guidance of Board of Trade some opinion as to what superintendence and direction means in section 82 of Act, 1883, that the superintendence should not apply to those acts of discretion which are specially provided for by the Comptroller in other parts of the Act. As to appeals, that there should be one against the acceptance of a mark, as well as against refusal to register; would necessarily increase the number of appeals. If continued to Board of Trade, one fixed officer to hear, say the solicitor, who should be made definitely responsible. Suggestion as to carrying on proceedings in which the Comptroller is a party. At present conducted very often without any consultation with him by the Board, 2882. That Act should be amended in view of decision in Court of Appeal that the parties have no right to go to the court without permission of the Board of Trade, that there should be a new definition of words, exclusion of words in regard to non-pile cotton piece goods, amendment touching brands, of section 63 as to prosecuting applications, that wherever the distinction of goods is made in the class it should only be on evidence by declaration as to the existence of a separate business. On renewing of marks, power to be given to limit them to particular goods on evidence of user. Opinion on Mr. Johnson's suggestion to give Comptroller authority to act (on declaration) that a mark was not used for two years on a separate description of goods. A great many marks are not applied to anything like the extent of the class. Suggestions as to fees, 2891. Office always advises registration of separate combinations of colour; many firms so register. Fees for designs. Further illustrations of difficulties as respects words (ancient and modern Greek), 2899.

Saturday, 7th May 1887.

MR. FREDERICK WILLIAM GRAFTON.

Is a member of the firm of Grafton and Co., Calico Printers, of Manchester. Is interested more particularly in that part of the Act of 1883, relating to designs. Urges that the Act should, like the old Act, apply to the merchant who fraudulently copies patterns as well as the printer who produces them. That if the latter has innocently offended the person who orders should be primarily liable. Practice of certain printers to copy and then destroy pattern. Some alteration of the wording of clause 58 of the Act, 1883, required. A common practice that the merchant supplies the patterns and induces the printer to copy them as found to the cost of their firm. Have taken proceedings against printers in certain cases, but have not done so against any merchants, 1843. Have recovered penalties on two or three occasions within the last year of two without going into court. Question as to the meaning of clause 58, whether the 50*l.* penalty applies to every separate piece printed or to every separate order, or what it does apply to, opinion on suggestion already made that the amount should be 100*l.* 50*l.* on each piece would be too much. Question if a smaller amount could be put on the piece. Thinks that 100*l.* penalty is not too much on each transaction, though it would be on each piece, 1853. Liability wants defining, a stumbling block at present to lawyers in Manchester, 1856. A lump made up of pieces dealt with exactly in the same manner as a piece, design put on in the same way. A penalty of 50*l.* enough, if applied to the piece, 1867. Difficulty of fixing a sum in relation to an order because it may be a very small or a very big one. Suggested alternative to an aggrieved person that it should be not exceeding so much per piece, or not exceeding so much in respect of the order. Would rather have it 50*l.* or 100*l.* on the transaction, 1872. Result of cases that did not go into court; compensation of 50*l.* and 100*l.* on the transaction, and patterns turned off. All goods so infringing of a very inferior character to those of his firm, and sold at lower prices in competition in distant markets. Object to get them out of the market as well as to fine them, 1876. Losses sustained from pirates, 1877. Whether when a design is fraudulently applied to a single piece it has been applied to an article of manufacture, and when to another piece to another article of manufacture, a question that may hereafter come before the courts, 1878. The word "Registered" only put on one part of each piece, the end. As to liability of a person imitating on a piece that has not got the word on, in view of his not being able to inspect the register of designs. What inquiry a person can, or ought to be put in a position to make of the Office, 1887. Sees no objection to Office on applicant paying a fee and producing a design, being informed whether the same is registered, 1889. How long it takes for a design to become known in a foreign market. Would prefer five to four years as period of protection, 1892. Difficulty of determining what is an original design. If anyone takes a form that has been in actual use it cannot be original, 1896. Would have no right to register because he printed the design, unless by arrangement with and order of the merchant, 1898. Case put before committee by the Manchester Chamber of Commerce of two printers printing the same design communicated to them by different merchants from abroad; question who is the proprietor, 1905. Common thing to have patterns sent from abroad for imitation, but very unlikely that the same thing would be applied in the same way by two or three different printers, 1906.

Wednesday, 11th May 1887.

MR. JOHN IMRAY.

(Formerly President of the Institute of Patent Agents.)

That the council of the Institute of Patent Agents appointed him with Mr. Clark and Mr. Justice to attend Committee. Patent Office in respect of trade marks exercises two different functions, one formal to see that applications are put in proper form, &c., and the other judicial. Questions whether office is in a condition to perform latter well. In view of varying opinions in courts of law not surprising that Registry Office experiences difficulty in deciding whether a mark is within the statute. Appeals, favours one from the Comptroller to the Law Officers as more satisfactory than one to the Board of Trade, who throw the cases into the courts. Patents are granted to applicants at their own risk, but in trade marks the office has to judge whether the mark is sound or not. Why should this be so? 1910. Strong reasons why the responsibility should be left to applicant as a man can more easily decide as regards a trade mark. Injury inflicted on applicants by great delay at Office. Market is lost. That the practice should be assimilated as much as possible to the patent practice. His view on difficulties that would arise, 1912, and as affecting the value of marks, 1917. Is against opponent to a mark being required to find security for 200*l.* Opinion on suggestion made to Committee that in cases of appeal if Board of Trade differed from Comptroller they should deal with it themselves, but if they agreed with him there should be no hearing before them, but they should refer to the court. That office shall be one merely for registration of applications in proper form, that all applications shall be allowed subject to an opposition stage, procedure for opposition to be simplified, that the classification of goods be re-arranged and enlarged, *i.e.*, the number of classes to be increased. Every-day instances where a class cannot be found exactly suiting the goods, 1918. Further sub-division required. Want of a more explicit definition of clause *c.* sub-section 1 of s. 64 of Act 1883. Suggested amendment of, objection to names of places as trade marks, 1919. Thinks no geographical mark should be allowed at all, would not object to taking the name of a place so far out of the way that it could not be mistaken as a place of manufacture, 1922. Suggestion of "Arbitrarily selected" instead of "fancy" for words, 1923. Varying opinions of courts as to geographical words, 1924. The case of Glenfield Starch, Balbriggan Hose. That the latter goods should be designated by some other name not geographical. Recommendation that a subject-matter index of fancy words and devices be prepared and published for the use of applicants. This very necessary if it should be left to applicants to register at their own risk. That

certificates of registration should have printed on them or annexed a representation of mark, as done in America. Similar system in regard to designs, 1940.

Mr. PHILIP MIDDLETON JUSTICE.

Practice of American Office as relates to registering in colour. Is not there any more than here part of the registration. Higher fees and longer terms in the United States, 1943. Oppositions and required bonds. Words accepted by Office as new marks, fancy words, subsequent to decision in the Electric case, and many of which in his opinion should not be registered. Precedents not adhered to in the office, the phrase "Rough on." Attention of the Comptroller called to several instances that examiners do not act on same lines as the Comptroller, resulting in a most uneven practice, admission of Comptroller on point, 1945. Want to get some recognised practice, 1949. List of marks advertised in support of his statements. Differs slightly from Mr. Imray as respects geographical words. His opinion on the Melrose case and the terms Balbriggan, Bessemer, Singer, Alpine, arbitrarily chosen names. "Tin plate" brands, 1955. Holding of the court in the "Electric" and "Melrose" cases as to fancy words, 1957. The words Bessemer steel have come to represent a process. Opinion as to what Balbriggan Hose now means; the word "Dentaline," 1965. Dictionary words which are descriptive of the goods, and meaning of arbitrarily selected words. Objectionable to register such words as "Best" for iron or "Brilliant" for steel, or such as those contained in the list submitted. Sees no objection to the words "Sunlight Soap" or "Dome Blacklead," 1976. That a word trade mark while not absolutely descriptive may convey an impression of what is intended. But the term "fluid" as applied to ink would be descriptive. Purely or indirectly descriptive words, nice distinctions, 1980. Arbitrarily selected letters or symbols, a very large business done in the United States with goods under such, 1981. No proper certificate of registration issued, question when it dates from, advisable it should be clearly set forth in certificate, 1985. Practice of the Comptroller to submit an applicant's mark to the owner of an already registered mark bearing some resemblance for his consent. Failing to obtain it the application is refused. Considers it a most objectionable practice, 1985.

Mr. WILLIAM CLARK.

Thinks "Dentaline" an excellent mark for tooth powder, "Coraline" for false gums. Suggested amendment an arbitrarily selected or invented word, 1989. Further to confine the prohibition to its being descriptive of the article to the selected word as distinguished from the invented word. Manufacturers practically get the benefit of many words they could not register by filing a representation of the article, points out that the resolutions submitted on the part of the Institute have not received the unanimous approval of even the whole of the members of the council, that is, as regards the first resolution, *i.e.*, in favour of allowing everybody to register a Trade Mark, 1992. While he thinks that the Office should accept and register designs in the same way that they accept patents without examination as a trade mark is defined by the Act, and there should not be a great difficulty in deciding what is a proper mark for registration. The applicant for a patent or design if refused cannot invent something else, but he can a trade mark. He does not lose the whole benefit of his manufacture by being refused. If you register any mark, very serious injury may be caused to an innocent trader. Against the consent of owner of existing registered mark being asked when the Comptroller has to deal with application for a mark resembling same, 1993. In favour of American system, where applicant has to file a full description of the mark in the same way as for a patent, ending with a claim, as it would very much simplify the duty of the office, and also appeal to the court, 1995. Answer to possible objections, 2001.

Saturday, 14th May 1887.

Mr. HERBERT HUGHES.

Is one of the firm of solicitors to the Cutlers' Company, and secretary of the Sheffield Chamber of Commerce, and is well acquainted with working of the Act of 1883, so far as Sheffield is concerned. At time of passing of Act it was the desire of the company to insert in the 3rd subsection of clause 81, provision to give them jurisdiction in a great many hardware goods without a cutting edge. Subsection hardly goes far enough. A man carrying on business in Sheffield in iron as well as steel, or steel and iron combined, has to go to the Cutlers' Company for registration in Class 5 for his steel, or steel and iron goods, and to London for registration so far as the pure iron is concerned. He consequently has to pay the fees on the papers at Sheffield, and again in London on application there. Desire to be registered for iron and steel on one set of fees. Electro-plate trade a large one in Sheffield. The latter obliged to go to London for registration, 2196. Agrees that the intention of the Act was to leave the power to register at Sheffield those things that were the special manufacture of Sheffield. Company's register had been going on for about 200 years. Had never registered electro-plate goods, but it would now be more convenient to allow registration in Sheffield upon the different trades carried on there. Would not affect a very great many marks. Their registry office has always worked easily and without friction with the London office, 2201. Fees, system at present adopted, company at some expense and loss in carrying out the provisions of the Act. If a local registry were established for all goods there would be more fees. For the last two or three years the company have borne considerable expense in the action they have taken with regard to the false marking of goods and marks of origin abroad, 2208. The company did not at any time register trade marks used on iron that had no relation to cutlery or edged tools. An inconvenience for a man who is an electro-plater to have to instruct his agent to do part of the work in Sheffield and part in London, 2210. Details of the expenses recently incurred by the company, 2213. As to Birmingham and Wolverhampton manufacturers registering in Sheffield. Suggestion for an amendment of the Act, sub-section 2 of section 81. Reasons for this. Wording should be, "and shall enter "in such register in respect of the same goods, upon "application being made in the prescribed manner, all the "trade marks." Result of owner not applying and not being put on, 2218. A good many people who own such marks have not come in and had them registered. Upon the owner the responsibility of taking action should rest, 2222. Duplicate registry under sub-section 6, question of necessity of and reasons for, 2225. Seems unnecessary that under sub-section 7, when a man who is registered upon the Sheffield register brings an action, he should have to apply to the Comptroller-General for a certificate for use in court. Should be a certificate from the Cutlers' Company, 2226. Necessity of a ready and economical appeal to some "hearing officer" independent of the Comptroller. Necessity of paying costs of latter in any event, 2227. Objection to an appeal to the law officer, grounds of. Comptroller practically deciding upon a matter which involves the work of his own department, 2228. Calls attention to the definition of Trade Marks. Under the 64th section of the Act, if a man has a device or any essential particular, he can add any letters, words, or figures. Can register a dog plus the word Sheffield, and then sell the mark as a whole to a man who lives in Birmingham, when the latter would be entitled to mark the dog and Sheffield on goods which had never been in Sheffield. Illustrations of this. Company would wish that the registration of the name of a town shall only be valid so far as relates to goods made in that place, 2230. Existing law on merchandise marks entirely defective; why this is so, firms from Birmingham and other towns have established agencies in Sheffield, and claim the right to put their name and Sheffield upon the goods they manufacture, 2233. Purposed action of the company in view of decision of court in the "Melrose" case, 2234. A person should keep away as far as possible in registering or employing a mark from anything that is common or ordinary. Letters in a particular form (monogram); opinion whether it might not be dangerous to allow them; does not press the point. Oppositions. Person opposing obliged to enter into a Bond. Counter statement and Bond really not required. Proceedings may involve a loss of three months. Suggests that a simple notice of opposition should make the matter ripe for decision by the tribunal, 2241. Time occupied in the case of registration at Sheffield. Company desire to get rid of necessity of sending duplicates of the whole of the proceedings to the London office. Might send up a form of certificate with essential particulars of application, 2243.

Saturday, 21st May 1887..

Mr. EDWARD PICKSTONE.

Belongs to the firm of Robert Hopwood and Son, Manchester. Is acquainted with nature of some of the statements put forward by the Trade Marks Committee of the Manchester Chamber of Commerce. Does not agree with them on the subject of "Headings." The latter are of very great value, and provision should be made for their protection, 2455. Sufficiently distinctive evidence from colours and material to make registration practicable. Cloth shown that has cost many thousands of pounds to establish in certain markets, novelty of the heading thereon. If headings are of no value why do rivals pirate them? Imitation shown. Is most distinctive as a trade mark. Headings used to trace the maker of the cloth. This firm confine themselves to trading with one individual for a certain market, are therefore of double value. Letter from one of the largest exporting houses in London, Rangoon, and Calcutta in support of his contention. Objection of purchasers to doing away with headings, their cost. Was not satisfied with the way committee of experts was formed after passing of Act of 1875, seemed one-sided, 2461. Manufacturers were not consulted, those interested in headings not consulted or sufficiently considered. Though there were several large manufacturers they were not so much interested on this point, 2467. Heading kept for a special cloth. Question as to what class it would be registered under, sees no difficulty, 2477. The large distributor knows perfectly well of the imitation, but the poor consumer is deceived, 2478. The imitation in question did not arise by chance. Thinks it would be advantageous, supposing there should not be registration of headings, to provide a penalty for imitation, but still maintains that it is the best trade mark, 2483. New Act has failed as far as they are concerned. His views on the difficulties of comparing one with another submitted for registration. A number of marks put on which produce an effect on mind of the buyer that he is getting something from another quarter of the same cloth and so their business is ruined, 2496. Surprising when you try to make a distinctive heading how distinct you can make it. Only when they want to get near that there is difficulty owing to assimilation, 2501. Has found in other cases as many as 19 different persons imitating him, while his heading has been the original one, 2502. Opinion as to gold headings. The manufacturer should have his own protecting mark, the trader what he likes, 2506. Merchants come to their firm and buy direct and gives a heading, puts on any stamp he likes, protect all the headings that come to them and that they are asked to protect. Cloth not sent out without an impressed mark also. Is a matter of arrangement with manufacturers to insist upon the goods made by them bearing their own stamp, or mark, or heading. Common headings open to the trade, and certain ones common to particular markets. That which is distinctive of a special house should have distinct protection against piracy, 2519. Committee of experts and the 11,000 or 12,000 headings then existent, 2520. Would register simply from general appearance and character. As to registering under the Designs Act. *Effect* can be registered, 2524. Further opinion on difficulties of managing registration, have applied for heading separately and in combination so that if there is weakness in one part it may be covered by the other, 2533. Has ten specially reserved headings, number of common ones, special ones, 2537. Resolution passed by committee of experts on subject. Owners were not deprived of power of proceeding against piracy under the Merchandise Marks Act, 2538. Touching the possibility of putting some special design on goods, and manner of effecting it. Refusal of Office to accept and register in such instances. What is required is a double register, every one of stamps produced is registered by itself and in combination, there has been so much uncertainty that no expense has been spared to get protection, 2554. Whether other manufacturers have as distinctive a heading. His firm especially lay themselves out to supply certain markets, amount of evidence that could be forthcoming to show the importance of headings, 2556. Registration not impracticable if effect is to govern decision and not stripes or designs, 2557. That it is impracticable to register all but a majority of the headings, 2559. Variations in size or tint of stripe, effect on the purchaser who recollects only a stripe of a particular colour, 2565. Their firm applied to for certain cloth without their name, without their stamps, but consent not given. On pieces of different quality desirable to put a different heading. Proceedings threatened against imitators. Heading of more importance than trade mark.

Mr. SAUL BENJAMIN BIGIO.

Is a merchant and buyer in Manchester. Considers headings when they are distinctive as most important to manufacturers. In the foreign market the very first thing the buyer looks at. Heading will always sell until it is found out that the cloth has deteriorated in quality. Is speaking of the Turkish markets. His firm send cloth to diffierent parts of Turkey, Persia, and Egypt. Manner in which the buyers order on heading. His experience in putting a certain cloth on the foreign market, found within six months that every maker in Manchester began to make that identical heading and on lower cloth. Has a bad reputation now. One of the reasons that English productions have got into bad repute abroad through unscrupulous merchants or manufacturers stepping in and using headings as described. Will not say whether it is the fault of the merchant or of the manufacturer. His experience abroad on the subject. Most of the natives cannot read what is on the cloth, the heading is the great indication, 2575. Is of opinion that a heading ought to be and can be registered. Is not speaking of the old headings, but these original ones a skilful man can produce. The very first imitator can benefit at his expense by palming off a lower cloth by its means, 2577. The price keeps reducing, the cloth keeps going, and dies out, 2578. Orders given by cutting slips off with heading and sending them to Manchester. Native has got an idea that one heading is made in one mill and never in another, and consequently thinks that the manufacturer began with a good cloth and afterwards reduced it himself. The opinion abroad that the maker himself has made the reduction, not the shipper. Difficulty of properly putting a stamped heading on certain goods. Has tried to do away with headings altogether, but the question then arises into whose hands the piece passes? No indication to show that the piece is complete. Goes through various hands, a portion might get cut off. The native looks at the two ends of the piece. Taken to define length as well as quality, 2581. Failure of the attempt to do without headings. What suggestions he has to offer in view of the large number existing to effect one registration. Old headings and common ones known in the market. Special ones how defined, has not slightest doubt could be defined by experts. Would only provide for registration of special or distinctive headings, 2586. Suggests registration for a particular market, 2591.

Mr. JOHN C. VOCOTOPOULOS.

Is a merchant in Manchester dealing in cotton goods. Heading of great importance in the export trade, and much mischief done by imitation of same. And thinks it practicable to register them (such as are distinctive). Difference in general. Appearance to guide Registrar. Does not think it would be very difficult to form an opinion, 2603. What he considers a distinctive heading, looking at certain specimens before Committee. Would take into consideration combination of colour and material, 2609. Having had his attention called to the rough material of a certain heading put before committee is of opinion that it is distinctive, 2613. Rigorous examination made by natives of the goods, even look at the curl of the fringe, 2614. The difficulty of deciding must be left to the Registrar and the Board of Trade, the thing ought to be done, responsibility rests with the authorities, 2620. What could be registered in the way of headings under Act 1875, contention of committee of experts. Applications on the point under Act 1883, grounds of refusal to register, colour an essential part of registration.

Mr. JOHN CUTLER.

Has given considerable attention in his practice at the bar to the question of trade marks. Drew some of the clauses of the present Act. Difficulty arising where an opponent of registration of a mark is out of the jurisdiction, an originating summons cannot be served. Suggests that when a person out of the jurisdiction opposes he ought to be compelled to give an address for service in the United Kingdom. Also arises in action under section 90 of Act, suggests that where a foreigner avails himself of the English register he should give an address for service, opinion on kindred suggestion of another witness, 2624. Suggests that it would be a benefit to trade-mark owners if their marks were put on somewhat the same footing as patents are put by section 31 of the Act, so that a certificate of validity could be obtained, and in subsequent actions for infringement have solicitor and client costs. Suggests in

reference to appeals to the Board of Trade that sub-section 4 of section 62 should be altered to give the applicant for registration the right to go to the court if he likes, 2626. Opinion on suggestion made to the committee that appeal should be to the Law Officer, favours it going to the court. His opinion on the suggestion already before Committee on this head, 2628. Very desirable there should be a cheap appeal in the first instance. Considers it rather anomalous that if applicant is refused registration, and the court ultimately decides Comptroller was wrong, applicant has to pay Comptroller's costs, 2630. Applicant for registration of labels should disclaim common particulars therein, whether they consist of devices or of words. Desirable that he should put in a claim as in the specification of a patent, procedure in actions at law as illustrating necessity of such requirement, calculated to save expense and trouble. Directs attention to the provisions of clause 86 of Act 1883, 2638. Great liberality shown by officer in accepting marks, susceptible of abuse. His opinion as to the word "Brand" in section 64. Opinion as to word marks and fancy words. That the mercantile community have shown the greatest desire, even before the first Registration Act, to have word marks, most important early legal cases on, words registered plus some device. Word really that was sought. Then words are most useful for advertising purposes, as a large number of papers will not take pictorial advertisements. A good deal of liberality should be shown as regards registration of word marks. Desirable to get rid of the word "fancy" altogether. What he thinks might be accepted for registration. Suggestions for meeting difficulty in relation to geographical words. Puts forward wording for amendment of clause of Act. Reference to the "Electric Velveteen" case. Further views and opinion on the geographical difficulty. Sees no objection to allowing a man to register the name of his estate or place, with certain reservation, 2653.

Saturday, 11th June 1887.

Mr. W. F. WINDSOR.

Is in business at Manchester as a "grey cloth agent." Was for many years a manufacturer. Represents about 20 manufacturers. Headings are extensively used. Grey cotton cloth could not be sold without a heading, which, if used by a particular manufacturer in certain markets, acquire a special value, 2660. Desirable to give legal protection to headings of a special character if practicable. That it is not so at the present stage on account of the enormous number in actual use, and the difficulty of producing a distinctive one. In his own business has used at least 10,000 headings. Number of colours capable of being used very small. Variations made accidentally and unintentionally by the weavers very great. Believes that their registration is impracticable. Did not send in one to the Committee of Experts when they met in Manchester. Difficulty arising from the various shades of colour. Headings intended to be the same and for the same delivery of cloth are not so, and go abroad in different shades, 2666. Illustrations of the same ordered heading produced by different weavers. Reason why the second customer wants a heading as nearly as possible like the first, to make the buyer abroad understand that he is selling the same cloth as his competitor. Manchester admits it is a great mischief, but not preventible with this enormous mass of headings. Fear of a mass of litigation in any attempt to prevent it. Thinks in practice it would be found impossible to define a distinctive heading so as to prevent imitation unless a very wide and arbitrary law were set up, 2675. Opinion on the specimen of heading put forward by Mr. Pickstone as distinctive. Under the impression that he (witness) was the first person to use that material. An exclusive right of property in it would be unfair. Certain uses still remain if heading is pirated, as an ornamentation of, and to show the completeness of the piece. Certain markets in which cotton cloths are not saleable unless they have an ornamental heading on them. Headings made in the material to which Mr. Pickstone refers for more than 10 years. Opinion as to making it penal to imitate; difficulty of bringing home the charge of colourable imitation. Does not like penal or criminal action in regard to trade. Legal action likely to produce injustice if strained at all. An illustration of this in the case of Carver Brothers *v.* Bowker. If it were in the power of great firms to bring actions for penalties against small firms on ground of imitation of headings, the latter firms might be much injured. Hopeless to attempt to register headings; 50,000 or 60,000 probably now in existence all within two to four inches in width. Could not properly be claimed as distinctive, 2689. Glad if something could be done to hinder piracy apart from registration. As to the practice of keeping the same trade to the same headings. Reasons why variations in same are sent out. The man who finds his heading is becoming debased, sends out another cloth with a slightly different one; the manufacturer who sends the inferior article gets a better price than he otherwise would. Goes on where the trade is in the hands of an inferior class of trader. Fancy ornamental headings in the Levant. Thinks at the present day they look more to the quality of the cloth and to the shipper's stamp than the heading, 2700. Intentional imitation, variation owing to the manual labour by different weavers, impossibility of definition, use as aiding merchants to sell goods on their merits purely where there has been a fall in value in the market, 2707. Different headings suit the Eastern market and the retailers. Question how far the heading is an element in the price of the goods, 2713. Registration "by effect" the most impracticable proposition of all, 2716.

Mr. JAMES SMITHSON.

Carries on the business of spinner, manufacturer, and agent in Manchester; extent of business. "Headings" a matter of importance. That there is intentional imitation. Thinks it would be impracticable to register, because the shades of colour would come so nearly alike on different cloths, and there would be so much variety where the same material is used. In his business has about 6,200, with shades of difference between them. Impossible to say in what respect one heading differs from another. Thinks that if imitation were made penal, the shades of difference being so slight, honest men would be constantly exposed to actions for no intentional crime. The necessity in the trade for making new headings when sending patterns abroad; there will be a range of qualities. Has had to make as many as 200 in a few days. Question of there being facts in addition to prove that the resemblance was intentional, and for the purpose of misrepresentation. Would be a great advantage to put a stop to cases of intentional fraud where orders are expressly given to make a heading precisely similar to a known one. Difficulties he considers are in the way unless you have a clearly defined registered heading to start with. Means at a manufacturer's disposal for ascertaining whether a particular heading brought to him to imitate, is the property of another. Thinks it would be rather an involved and difficult matter to prove such reprehensible trade practice, though extremely desirable to do so, if possible, in the interest of every honest trader. Damaging to the trade of Manchester that such practices should be pursued. Number of instances in which headings are used now when they have no distinctive value. 11,000 sent in by the cotton trade in 1876. Classed with others in the B list, 2743. Suggests that a stamp on the cloth might be the distinctive mark of the piece; heading then would be simply for ornamentation, or as a sign of its being of proper length. Confirms the facts given in Mr. Bailey's letter to the Committee (*see* Appendix), giving illustrations. If flushed borders are difficult to register, headings would be much more so, as the former are much more varied in character. Would be very much surprised if Mr. Hoyle has 2,412 headings belonging to his firm, and distinctive to those of others. A heading is meant to indicate the same cloth which has been sent before, which, of course, includes width, length, weight, and all the other distinctive characteristics of the cloth. Thinks that experts would be able to say whether a heading is distinctive or not, but certainly would not be able to say which was the better cloth. Registration should be regardless of quality. Not unfrequently makes headings very distinctive indeed to his own eyes, and his father has not thought them so. Shows the danger to which a man would be exposed in making them. Explanation of the effect in making up from precisely the same material; difference in shade produced is considerable. In going through their own book of headings has to look carefully to know whether they are made from wool or cotton. Every variation in width in specimens shown to Committee, though it was requested that the pattern should be adhered to as much as possible, 2753. Cloths are sold both by the headings and quality. Instance in which a cloth made by his firm was so much imitated in heading that they were forced to put their name on as a distinctive mark. Cloth would not have held its ground but for this. It was found that merchants put in on a great variety of cloths, and actually mixed the firm's goods with others in bundles. It

was of inferior quality, and customers complained. Merchants do not like the stamp on, and when no serious competition is found, goods are allowed to go without a stamp, 2757. Unquestionably in the case he mentions the heading was put on for the purpose of making it believed it was the cloth of his firm; to give proof of it is, however, another matter. At the time the cloth gained its reputation it had so far a distinctive mark, at present bought on account of the stamp and also the heading. Thinks some kind of stamp would be the right way of attaining the end desired, 2772. Would be an enormous expense to work a design into the heading. Further statement of the difficulties in connexion with laying down any principles for distinguishing between one and another. Impossible to carry out a system of judging by the general effect of the whole. The number of headings made is so enormous that one would be constantly interfering with some one else's property unintentionally. Open headings, distinguishing marks put on goods for different merchants (from 1 up to nearly 6,000). Suggested registration in colour, if referred to a court of law, who would decide on the fine points whether there was an imitation in the specimens exhibited. Use of noil (waste) silk; cannot see how you are to make distinctions between one material and another. Does not think any one man is entitled to solely use one material. Thinks that the use of a particular material in a certain way would still leave great difficulties in determining between headings, 2786.

Saturday, 18th June 1887.

MR. A. N. D'ANDRIA.

Carries on business as a spinning manufacturer in Stockport and Manchester; has experience of the use of "headings" for cotton goods; imitation of such headings very mischievous to trade. Headings could in his opinion be registered as other trade marks. The new ones might easily be registered. Infringement generally intentional; protection required more against the latter. Opinion on penal legislation to repress practice (without registration). Expenses of the law. Would bring the charge home more easily if the genuine heading is registered, 3213. As to the difficulties attending registration, a good deal depends upon effect. As to how the difficulties could be met in dealing with colour and shading, 3,224. That there should be new headings and arbitration as regards existing ones. Question one more for the future, new combinations can be introduced, experts to decide. Has thousands of headings in his mill, distinctive ones very few because imitated by others. New ones can be invented without difficulty. Better for English traders and their reputation abroad, 3231.

Wednesday, 20th July 1887.

MR. ISAAC HOYLE, M.P., further examined.

As Committee have had a good deal of information since his first evidence on the registration of woven headings, he thinks it right to submit himself for examination on any points. The very fact that headings are so extensively used and so varied settles the question of their distinctiveness. Does not think any one firm has thousands of headings. Specimen of an article manufactured by his firm and supplied to a merchant. Explanation of marks on the same, fraudulently copied, 3236. Merchant does not wish his customer to know who made the goods. A great advantage if the mischief can be stopped in any way, because it is done to pass inferior goods, so that it tends continuously to lower the English reputation in foreign markets. Headings are fraudulently used little by little until they get to the very lowest quality of all. Instance of a good quality cloth sent to the China market some years ago. The demand now in China is such that everybody is sending much better qualities, 3244. Desires to show to the Committee that American manufacturers of this kind of goods do not put any headings on at all. How their goods are made up and stamped. Why this can be done in America. Merchants there largely hold the capital in munufacturing, bleaching, dyeing, and printing concerns, so that it is really all one concern. They have an interest in stamping the name of the mill or works where goods are produced. The rule in England is for merchants who have no interest in the mills to buy and ship goods. Specimen of cloth his firm make and consign. No conflict of interests in the American trade, hence the different way of conducting business there, 3257. The words "imitators beware" are quite sufficient to prevent any respectable house attempting piracy. His firm find a falling off in demand from markets with which formerly they had very considerable business. Business with Italy is but a fraction of what it was 15 or 20 years ago; the same with Austria and Russia. Countries in the south-east of Europe are being supplied with goods which they formerly sold in Manchester for those markets. Effect of steam and electricity. In Italy they have built mills, are supplied with Lancashire machinery, and in some cases English overlookers, and so have got to make goods which were formerly sent from this country, 3268. English traders are face to face with a rivalry they never knew before. The whole civilised world is now competing with us. Professor Huxley's opinion, which agrees with his experience. In China the American competition is much more severe than it was. Statistics in proof of this. In his opinion competition is but beginning. In the United States they are making always a better quality, while the tendency of our system is to work down to the lower qualities. Statistics of British exports in support of statement. Surprising rapidity of increase in America. Their goods in China command a higher price than can be obtained for English goods. The manipulation, the manufacture is really very excellent, 3278. Is not aware that as a regular thing American goods in the markets he speaks of undersell English goods, though the Americans have at times taken very low prices when their stocks have been heavy. Has known cases where their prices have been 10 per cent. higher than goods of English make. Those who invent and produce should gather the fruit of their own skill. Should be no authority between the State and the inventor. Suggestions of Mr. Bailey and others to the Manchester Chamber of Commerce would tend to fix what ought not if it could be fixed. Registration should be kept in London under a competent officer, and Manchester, Bradford, Glasgow, and other large centres supplied with duplicates of marks registered for inspection. Merchants would then take a pecuniary interest in manufacturing concerns, seek out superior makes, and confine the sale of them to their houses, 3283. The middleman will always be wanted, but he desires that he and the manufacturer should have one interest only. The former should not control the administration of an Act of Parliament. His firm has always declined to put one man's heading on to another man's order. Private headings have been brought to them with a request that it should be put on a certain cloth. Order has gone elsewhere. Have sacrificed their interest to protect their customer. The proposal that there should be a committee of assessors in Manchester would, if carried out, be contrary to public policy and fraught with peril. His firm are merchants as well as manufacturers. Their travellers send home patterns of what is in demand. How a committee of middlemen, if not scrupulous, might act on receipt of such patterns, but with a Registrar appointed by Government there would be no inducement to favour any one class at the expense of another. Lord O'Hagan's opinion in an appeal case before House of Lords, touching the proceedings of the Manchester committee, quite agrees with the judgment. Repeats that Mr. Cheetham was the only manufacturer on the committee of experts and he was 75 at the time. Objects to the suggestions of Mr. Bailey and others, that applicants should be required to disclaim all words whether English or foreign, cautions line headings, borders, mottoes, monograms, letters, figures, names, and personages. Responsibility of Registrar should not be lightened in that way by such restrictions. The principle of refusing all marks calculated to deceive should be enough. Is not in favour of the registration of words or anything else if so near an imitation as calculated to deceive. Is inclined to think that the registration of words in the cotton classes might be abused, but wishes the restrictions to be as far as possible and the Government official responsible. People to be left to choose their own marks at their own risk. The principle underlying the Act of 1883, and Lord Cairns' seems invaluable, and any departure from such principle, otherwise than in suggested extended application in the opening of offices of reference in the large towns of Great Britain and Ireland, would be adverse to the interests o every great trade in the Kingdom.

Digitized with financial assistance from
Shri Brihad Bhartiya Samaj
on 31 October, 2019

LONDON: Printed by EYRE and SPOTTISWOODE.
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.